

**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: JOHN S. PHILLIPS

AQUIFER: DENVER

DETERMINATION NO.: 462-BD

Robert C. Balink El Paso Cty, CO

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In compliance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, John S. Phillips (hereinafter "applicant") submitted an application for determination of water right to allow the withdrawal of designated ground water from the Denver Aquifer.

FINDINGS

1. The application was received complete by the Colorado Ground Water Commission on September 22, 2003.
2. The applicant requests a determination of rights to designated ground water in the Denver Aquifer (hereinafter "aquifer") underlying 310 acres, generally described as the SE1/4 of Section 11 and the NE1/4 of Section 14, all in Township 12 South, Range 65 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated August 25, 2003, the applicant owns the 310 acres of land, as further described in said affidavit which is attached hereto as Exhibit A, and claims control of the ground water in the aquifer underlying this land area.
3. The proposed annual amount of ground water to be allocated and withdrawn from the aquifer for intended beneficial uses is the maximum allowable amount.
4. 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.
5. The applicant intends to apply the allocated ground water to the following beneficial uses: commercial, domestic, irrigation, industrial, fish and wildlife propagation, aesthetic, and for augmentation purposes. The applicant's proposed place of use of the allocated ground water is the above described 310 acre land area.

The replacement water requirement for withdrawal of ground water from the aquifer underlying the 310 acres of land claimed by the applicant consists of two different requirements, which effectively divides the claimed land into two areas. The amount of ground water in storage in the aquifer and a maximum annual amount available for appropriation will be determined specifically for the aquifer underlying each of the above two areas. These two areas are designated and described as follows:

Area A - 158 acres, generally described as the applicant's claimed land area in the SE1/4 of Section 11, in Township 12 South, Range 65 West of the 6th Principal Meridian.

Area B - 152 acres, generally described as the applicant's claimed land area in the NE1/4 of Section 14, in Township 12 South, Range 65 West of the 6th Principal Meridian.

These two areas are further described in a map attached hereto as Exhibit B.

6. The quantity of water in the aquifer underlying the 310 acres of land claimed by the applicant is as follows:

Area A = 8,864 acre-feet

Area B = 8,010 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 the land under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 17 percent.
 - b. The average thickness of the saturated permeable material of the aquifer underlying the land under consideration that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is as follows: 330 feet for Area A and 310 feet for Area B.
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 the 310 acres of overlying land claimed by the applicant is as follows:

Area A = 88.6 acre-feet

Area B = 80.1 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. Based on analysis of data in the records of the State Engineer's office, in accordance with the Designated Basin Rules, it has been determined that the replacement water requirements for withdrawal of ground water from the aquifer underlying the subject land area are as follows:

Area A - Withdrawal of ground water from the aquifer underlying 158 acres of the land claimed by the applicant 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 ground water is nontributary ground water as defined in Rule 4.2.19 of the Designated Basin Rules. No more than 98% of the amount of ground water withdrawn annually shall be consumed, as required by the Designated Basin Rules.

Area B - Withdrawal of ground water from the aquifer underlying 152 acres of the land claimed by the applicant will, within one hundred years, deplete the alluvial aquifer or flow of a natural stream 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. Also, the location of the land claimed by the applicant is further than one mile from the aquifer contact with the alluvium. The Designated Basin Rules require that at least four percent (4%) of the amount of water withdrawn annually must be returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal.

11. A 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 October 9, 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 the 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 October 16 and 23, 2003.
- 17.a. On November 14, 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-21. No other objection to the proposed determination of water right was received within the time limit set by statute.

- b. On February 4, 2004, the applicant and objector reached a settlement and signed a stipulated agreement.
 - c. On February 4, 2004, prior to an administrative hearing in this case, the objector withdrew its objection.
 - d. By Order of the Commission Hearing Officer dated February 6, 2004, Case No. 03-GW-21 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 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 Denver Aquifer underlying 310 acres of land, generally described as the SE1/4 of Section 11 and the NE1/4 of Section 14, all in Township 12 South, Range 65 West of the 6th Principal Meridian, is approved subject to the following conditions:

19. The allowed average annual amount of water to be withdrawn from the aquifer shall not exceed the following:

Area A = 88.6 acre-feet

Area B = 80.1 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. Replacement water requirements shall be as follows:
- a. For the aquifer underlying the above described 158 acres of Area A, no more than 98% of the ground water withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the water withdrawn is being consumed.

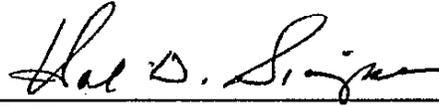
- i. Upon withdrawal of the total allowed average amount of water underlying Area A, in any calendar year, the allowed average annual amount of water underlying the above described Area B may be withdrawn through wells located on Area A if at least four percent (4%) of the amount of water withdrawn is returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal.
 - b. For the aquifer underlying the above described 152 acres of Area B, at least four percent (4%) of the amount of water withdrawn annually must be returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal.
 - i. Upon withdrawal of the total allowed average amount of water underlying Area B, in any calendar year, the allowed average annual amount of water underlying the above described Area A may be withdrawn through wells located on Area B if at least four percent (4%) of the amount of water withdrawn is returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal.
22. The use of ground water from this allocation shall be limited to the following uses: commercial, domestic, irrigation, industrial, fish and wildlife propagation, aesthetic, and for augmentation purposes. The place of use shall be limited to the above described 310 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 310 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 310 acre land area. Wells located within any one of the two described areas, designated Area A and Area B, shall only withdraw the allowed average annual amount of water determined to be for that area, as indicated in paragraph 20 of this Order, unless the following conditions may be satisfied:
 - i. Subject to compliance with the provisions in paragraph 22 of this Order, water may be withdrawn from the aquifer underlying a contiguous claimed area where differing replacement water requirements have divided that area into two zones.

- b. The wells must be constructed to withdraw water from only the Denver 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, but must be more than 600 feet from any existing large-capacity well completed in the same aquifer.
 - e. Subject to the provisions of paragraph 25.a of this Order, the wells may withdraw the allowed average annual amount of water from the aquifer together in any combination. 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 310 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Applicant: John S. Phillips
Aquifer: Denver
Determination No.: 462-BD

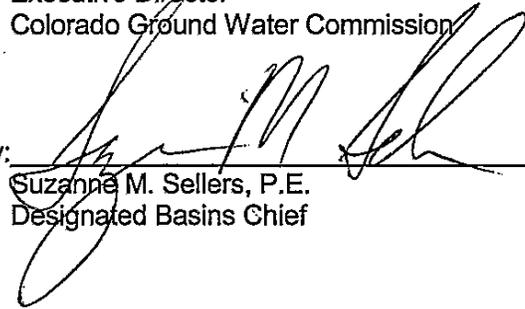
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Dated this 16th day of March, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By:



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

Prepared by: EBT

FIND-76-04

EXHIBIT A

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GSW-1

STATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

RECEIVED

AUG 25 2003

WATER RESOURCES
STATE ENGINEER
COLO.

NONTRIBUTARY GROUND WATER LANDOWNERSHIP STATEMENT

I, John S. Phillips, claim and say that I am the owner of the following described property consisting of 310 acres in the County of El Paso, State of Colorado:

(INSERT PROPERTY LEGAL DESCRIPTION)

SE $\frac{1}{4}$, Section 11, and NE $\frac{1}{4}$, Section 14, Township 12 South, Range 65 West of the 6th P.M., El Paso County, Colorado, as particularly shown on the attached General Location Map, Exhibit A.

and, that the ground water sought to be withdrawn from the Denver aquifer underlying the above described land has not been conveyed or reserved to another, nor has consent been given to its withdrawal by another.

Further, I claim that I have read the statements made herein; know the contents hereof; and that the same are true to my own knowledge.

John S. Phillips 8/25/03
John S. Phillips (Date)

John S. Phillips 8/25/03
(Date)

.....
INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.

1313 SHERMAN ST., RM. 818, DENVER CO 80203 -- 303-866-3581

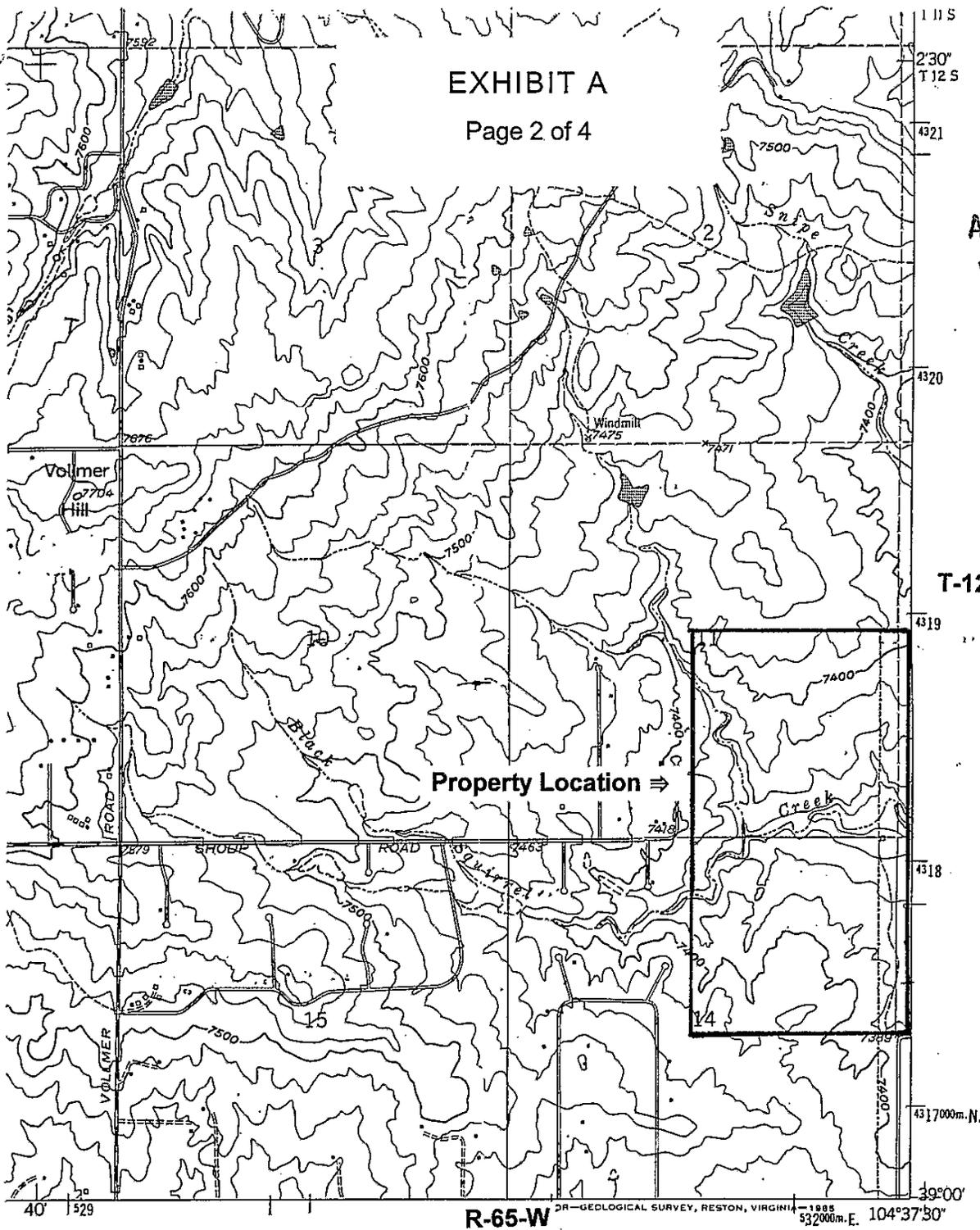
EXHIBIT A

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AUG 25 2003

WATER RESOURCES
STATE ENGINEER
COLO.



T-12-S

Property Location ⇒

R-65-W

U.S. GEOLOGICAL SURVEY, RESTON, VIRGINIA 1985

532000m. E.

104°37'30"

GENERAL LOCATION MAP

EXHIBIT A

BLACK FOREST, COLO.

39104-A6-TF-024

1954

PHOTOREVISED 1969 AND 1975
DMA 5062 II SW-SERIES V877



FALCON
5061 NE

EXHIBIT A

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John S. Phillips

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Legal Description of Property

A parcel of land which comprises the SE ¼, Sections 11, and the NE ¼, Section 14, Township 12 South, Range 65 West of the 6th P.M., in El Paso County, described as follows:

	<u>Description</u>		<u>Acres. M/L</u>
(1)	In Section 11	158 Ac., which is all of section.
(2)	In Section 14	152 Ac., which is all of section, except 5 acres in NE ¼, NE ¼, NE ¼.
	Total Acreage	310 Ac.

See General Location Map; attached.

EXHIBIT B

7 LEGAL DESCRIPTION:

A PORTION OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 14; THENCE N 89°16'16" W ALONG THE NORTH LINE OF SAID SECTION, 336.87 FEET TO A POINT ON THE WEST LINE OF AN ELECTRIC EASEMENT AS RECORDED IN BOOK 2030 AT PAGE 482 OF THE RECORDS OF SAID EL PASO COUNTY; THENCE S 01°05'47" W ALONG SAID WEST LINE 30.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S 01°05'47" W ALONG SAID WEST LINE 460.00 FEET; THENCE N 89°16'16" W, 473.48 FEET; THENCE N 01°05'47" E, 460.00 FEET TO A POINT 30.00 FEET SOUTH OF SAID NORTH LINE; THENCE S 89°16'16" E, 473.48 FEET TO THE POINT OF BEGINNING AND CONTAINING 5.00 ACRES MORE OR LESS.

EXHIBIT A

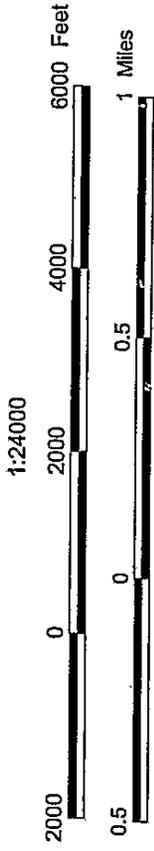
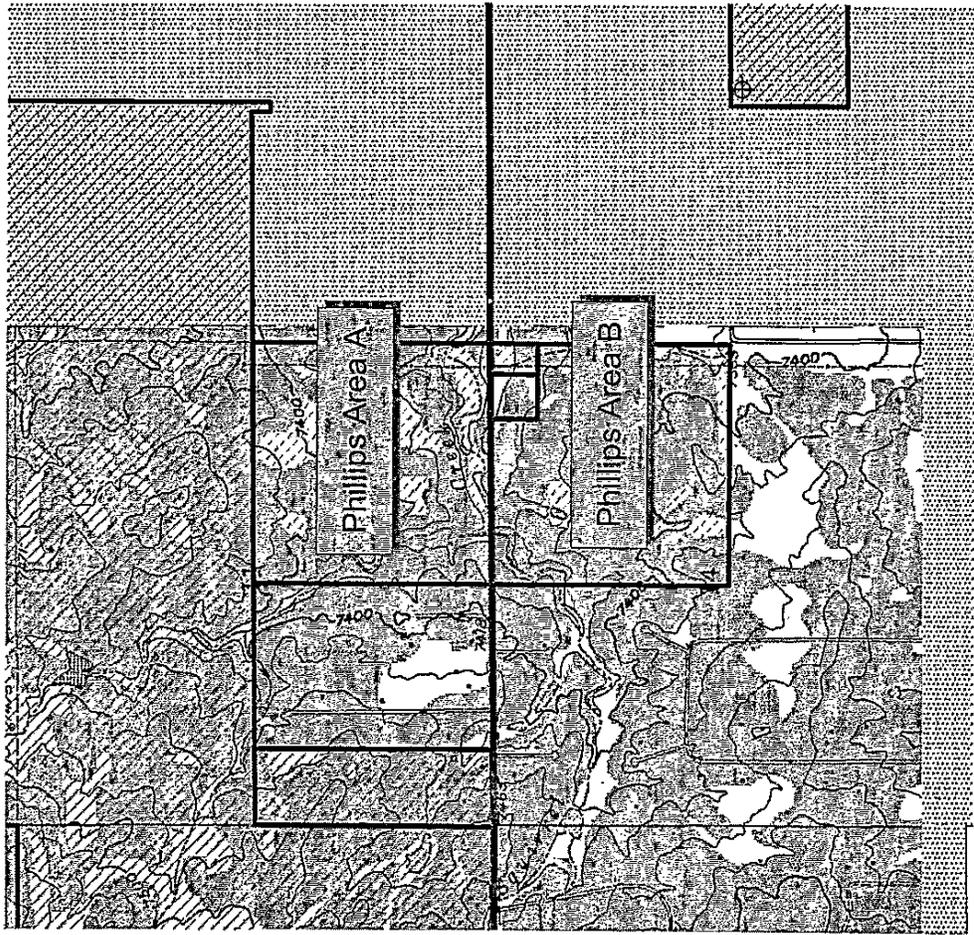
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Exhibit B



DIVISION OF WATER RESOURCES STATE OF COLORADO

Receipt Number 514527
Applicant Phillips, John
Aquifer - Denver
UBSC GWMD (4-12)
Nontrib - Not-nontrib delineation

Section 11
Township 12 S
Range 65 W
Meridian S

Area 310 acres claimed
Area A - 158 acres (nontributary)
Area B - 152 acres (not-nontributary 4%)



Office of the State Engineer
Division of Water Resources
Department of Natural Resources