

WATER RESOURCES REPORT

for

EAGLEVIEW SUBDIVISION

EPC Parcel #: 522600001 and 522600002

December 2021

Prepared By:



EAGLEVIEW SUBDIVISION
EPC Parcel # 5226000001 and 5226000002

WATER RESOURCES REPORT

December 2021

Prepared for:

ProTerra Properties
1864 Woodmoor Drive, Unit 100
Monument, CO 80132

Prepared by:

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Colorado Springs, CO 80919

Table of Contents

1.0	INTRODUCTION AND EXECUTIVE SUMMARY	1
2.0	PROJECTED LAND USES	1
2.1	<i>Projected Land Uses</i>	1
3.0	WATER NEEDS AND PROJECTED DEMANDS	1
3.1	<i>Water Demand Summary</i>	1
3.2	<i>Unit Water User Characteristics</i>	2
3.3	<i>Demand versus Supply</i>	2
4.0	WATER RIGHTS AND SUPPLY	2
4.1	<i>Water Rights</i>	2
4.2	<i>Adequacy of Water Rights</i>	3
4.3	<i>Description of Current Water Rights</i>	3
5.0	WATER SYSTEM FACILITIES AND PHYSICAL SUPPLY	4
5.1	<i>Source of Supply</i>	4
5.2	<i>Water Treatment</i>	4
5.3	<i>Water Storage</i>	4
5.4	<i>Distribution, Pumping, and Transmission Lines</i>	4
5.5	<i>Water Quality</i>	4
6.0	EL PASO COUNTY MASTER PLANNING ELEMENTS	5
6.1	<i>County Water Master Plan 2040 and 2060 Projections</i>	5
6.2	<i>Buildout (Including 2040 and 2060 Buildout):</i>	5
6.3	<i>Description of Long-Term Planning and Future Sources of Supply</i>	5
6.4	<i>Water System Interconnects</i>	5
7.0	CONCLUSION	5

APPENDICES

Appendix A – Land Use Exhibit

Appendix B – Water Supply Information Summary – SEO Form

Appendix C – Determinations and Decrees

Appendix D – Water Quality Results

1.0 INTRODUCTION AND EXECUTIVE SUMMARY

The purpose of this report is to address the specific water needs of a proposed subdivision of Parcels # 5226000001 and 5226000002 in El Paso County, CO.

EXECUTIVE SUMMARY: The water rights and replacement plan in place for the existing parcel are adequate to meet the needs of thirty-eight (38) lots proposed for the subdivision on a 300-year basis.

2.0 PROJECTED LAND USES

2.1 Projected Land Uses

This report pertains to the existing 121.21-acre parcel that is proposed to be divided into thirty-eight (38) lots. Please refer to the *Land Use Exhibit* in **Appendix A** depicting the proposed subdivision.

3.0 WATER NEEDS AND PROJECTED DEMANDS

3.1 Water Demand Summary

It is anticipated that each lot will use 0.47 acre-feet (AF) of water per year. This estimate is based information provided in Chapter 8 of the *El Paso County Land Development Code* as well as *Section 6.b. and 18. of the Findings of Replacement Plan for Determination of Water Right No. 746-BD in the Dawson Aquifer* located in **Appendix C**. Water demands and wastewater loads are shown Table 3-1 below:

Table 3-1: Summary of Expected Water Demands & Wastewater Loads

Water						Wastewater
# of SFE's	Annual Indoor Use (AF/YR/SFE)	Average Daily Indoor Use (GPD)	Irrigation (AF/1,000 SF)	Domestic Watering (AF/Horse/Year)	Total Indoor, Watering, & Irrigation (AF)	ADF (@ 90% Indoor Use) (GPD)
38	Note 1 9.50	8481	Notes 2 5.94	Note 3 2.42	17.86	7633

Note 1: Per replacement plan No. 746-BD

Note 2: Per replacement plan No. 746-BD at 2,000 ft² of irrigatable land

Note 3: Per replacement plan No. 746-BD at 4 horses per lot

Presumptive use values 0.26 AFY for indoor use

Presumptive use values 0.0566 acre feet per 1,000 square feet

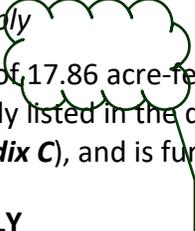
Update accordingly

3.2 *Unit Water User Characteristics*

Unit water user characteristics are counted on a *single family equivalent (SFE)* basis. All single-family homes are counted as one SFE, and user characteristics were based on information provided in the *El Paso County Land Development Code*, Chapter 8 or constants provided in the existing Replacement Plan Case Number 746-BD.

3.3 *Demand versus Supply*

An overall demand of 17.86 acre-feet for the proposed subdivision is less than the amount of supply listed in the decrees, determinations, and *Findings of Fact* (provided in **Appendix C**), and is further discussed in Section 4.0 of this report.



4.0 **WATER RIGHTS AND SUPPLY**

4.1 *Water Rights*

Update accordingly

Water rights and determinations were done by the Colorado Office of the State Engineer and are included in **Appendix C**. Table 4-1 below summarizes the information from said water rights and determinations.

Table 4-1: Water Rights Summary

Land Formation/ Aquifer	Determination	Tributary Status	Area (Acres)	Decreed Water 100-Year (AF)	Annual Allocation 100-Year (AF/Year)	Annual Allocation 300-Year (AF/Year)
Dawson	746-BD	NNT	119.34	5,370	53.70	17.90
Denver	471-BD	NNT	119.34	6,188	61.88	20.63
Arapahoe	470-BD	NT	119.34	4,666	46.66	15.55
Laramie-Fox Hills	469-BD	NT	119.34	3,312	33.12	11.04
Total Legal Supply					195.36	65.12
					<i>100-Year</i>	<i>300-Year</i>

- Beneficial Uses:** *Domestic Indoor*
Lawn & Garden Irrigation
Livestock watering
Commercial and Replacement supply

Note that only the Dawson formation is to be used for the proposed lots in this subdivision. According to the *Findings of Fact* located in **Appendix C**, the following conditions are allowed for the subject property:

- Water in the Dawson may be withdrawn through new well within the development, allowing up to thirty-eight (38) parcels to be developed on the subject property.
- There shall be one (1) Dawson aquifer well per lot.
- Each well must provide water to a house on the same lot, ensuring that during pumping, return flows from septic systems alone will always equal or exceed stream depletions in the same year.
- All thirty-eight (38) 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.

4.2 *Adequacy of Water Rights*

Current water rights are adequate for buildout demands of thirty-eight (38) lots and meet 2040 and 2060 buildout projections on a 300-year basis.

According to the *Findings of Fact* (Court Case Number 746-BD and Replacement Plan for 746-BD) located in **Appendix C**:

- Return flows from each lot from non-evaporative septic systems will be used to replace depletions from the alluvium created by pumping from the Not-Nontributary Dawson Aquifer.
- The use of each well will be limited to an annual withdrawal of 0.47 AF for household use, irrigation, watering of four (4) domestic animals, and in-home commercial use.
- Annual withdrawals from the Dawson aquifer are estimated at 18 AF/year over 38 lots (actually 17.90 AF/year). Subsequent depletions to the alluvium are estimated at a maximum of 7.039 AF/year by year 300. The estimated return flows from the septic fields at 90% of household use are estimated to be 8.55 AF/year, which is sufficient to cover the maximum depletion from the aquifer.

Conclusion:

The current water rights and augmentation plan in place are adequate to meet the estimated overall demand of 17.90 AF/year for thirty-eight (38) lots.

4.3 *Description of Current Water Rights*

The subject area's current water rights involve non-renewable supplies in the Denver Basin, further discussed below.

Non-Renewable Denver Basin Supply

The Denver Basin is a vast, deep-rock aquifer that stretches from southeast of Colorado Springs to Greeley, and from the base of the front range to the eastern end of Elbert County. Rights granted in the Denver basin are based on the ownership of the surface property – the larger the parcel, the larger the

allocation. This water is much deeper than typical residential wells, ranging up to 2,650 feet deep.

Denver Basin water is considered finite and therefore non-renewable. In the subject area, there are four main formations that make up the Denver Basin: Dawson, Denver, Arapahoe, and Laramie-Fox Hills (LFH), described from shallowest to deepest.

The subject property has numerous determinations under its existing boundaries, which total 65.12 annual acre-feet on a 300-year basis, and 195.36 annual acre-feet on a 100-year basis.

5.0 WATER SYSTEM FACILITIES AND PHYSICAL SUPPLY

5.1 Source of Supply

Supply for the thirty-eight (38) future lots will be met with future wells completed in the Dawson aquifer. These wells will be drilled, screened, test-pumped, and completed accordance with the Colorado Division of Water Resources rules and regulations.

5.2 Water Treatment

Water in a representative Dawson well within 0.5 miles of the Eagleview property was tested on October 28, 2021 for constituents required by El Paso County regulations for a confined aquifer. As mentioned in Section 5.5 the water quality sampling results did not detect any constituents of concern. Therefore, this report does not recommend any additional treatment to improve the quality of the source water in this area. Any desired treatment of existing and future wells will rely on the individual homeowners as this is not considered a *Community System* by the Colorado Department of Public Health and Environment.

5.3 Water Storage

Water storage (other than potential individual cisterns) will not be constructed. Therefore, a central water system with treatment and fire-flow capabilities will not be provided. The residents of each subdivided lot will be made aware of this since it will be included on the subdivision plat.

5.4 Distribution, Pumping, and Transmission Lines

Since there is no central water system proposed for this subdivision, no distribution, pumping, or transmission lines will be constructed.

5.5 Water Quality

The water quality in the Dawson aquifer in this area has typically been suitable for residential potable use. Water samples were obtained from an adjacent Dawson well (well permit #145709) serving the residence located at 9760 Arroya Lane (approximately 0.12 miles south of the Eagleview property. Water samples were obtained from this residence on October 28, 2021, with water quality testing performed by Colorado Analytical Laboratories and Hazen Research

through Colorado Analytical Laboratories, per the El Paso County Land Development Code section 8.4.7(B). Final results for all water quality testing were received on December 1, 2021, and can be found in **Appendix D**. All results were found to be below primary and secondary contamination limits established by the Colorado Department of Health and Environment. Therefore, there were no constituents found to be of concern and no additional treatment is recommended to improve the water quality of the source water, which is the confined Dawson aquifer, in this area.

Once samples are obtained a full summary of water results will be presented in **Appendix D**.

6.0 EL PASO COUNTY MASTER PLANNING ELEMENTS

6.1 County Water Master Plan 2040 and 2060 Projections

The subject property lies within the El Paso County Water Master Planning area, Region #3.

6.2 Buildout (Including 2040 and 2060 Buildout):

Expected buildout of the subject property is thirty-eight (38) total lots, ranging from 2.51 acres to 5.11 acres in size. Demands for the entire subdivision are listed in Section 3.0 of this report.

6.3 Description of Long-Term Planning and Future Sources of Supply

Per El Paso County criteria, the 300-year supply of water for the subject property appears to be more than adequate for full buildout, which would include both the 2040 and 2060 scenarios. However, the proposed supply in the Dawson aquifer is based on non-renewable sources.

If needed beyond the 300-year supply, the subdivision has water rights in the Denver, Arapahoe, and Laramie-Fox Hills formations, although a portion of the LFH water right is dedicated to augmentation to offset post-pumping depletions. Please refer to the *Plan for Augmentation* in **Appendix C**.

6.4 Water System Interconnects

The closest source for a potential interconnect is the Sterling Ranch Metropolitan District, approximately – approximately 0.5 miles to the west.

However, development of Sterling Ranch is not anticipated at any near date in the future and representatives with Sterling Ranch were not contacted at this time.

7.0 CONCLUSION

The subject property has adequate water supply to meet the needs of the proposed subdivision on a 300-year basis.

Appendix A

DEVELOPMENT NOTES:

1. WATER TO BE PROVIDED VIA INDIVIDUAL ON SITE WELLS OPERATED THROUGH A STATE APPROVED WATER REPLACEMENT PLAN
2. WASTE WATER TO BE INDIVIDUAL ON SITE SEPTIC SYSTEMS.
3. THIS PROPERTY IS LOCATED WITHIN AND SERVICED BY MOUNTAIN VIEW ELECTRIC ASSOCIATION SERVICE DISTRICT, AQUILA NATURAL GAS SERVICE DISTRICT, FALCON FIRE PROTECTION DISTRICT, AND THE FALCON SCHOOL DISTRICT.
4. EXISTING ZONING IS RR-3. PROPOSED ZONING IS RR-2
5. EXISTING TRAIL EASEMENT TO BE MAINTAINED TO A MINIMUM HEIGHT 30'
6. BUILDING SETBACKS:
FRONT YARD - 25'
REAR YARD - 25'
SIDE YARD - 15'
REAR YARD - 25'
7. DRAINAGE AND UTILITY EASEMENTS:
FRONT - 15'
REAR - 5'
PERMITS - 20'
8. ALL ROADWAYS AND DRAINAGE FACILITIES WITHIN DEDICATED RIGHTS OF WAY AND SPECIFIED EASEMENTS TO BE CONSTRUCTED TO EL PASO COUNTY STANDARDS AND TO BE OWNED AND MAINTAINED BY EL PASO COUNTY
9. PROPOSED METHOD OF GUARANTEEING FUNDS WILL BE ONE OF ANY APPROVED ACCEPTABLE TO THE EL PASO COUNTY ATTORNEY'S OFFICE.
10. LOTS 31 & 32 SHALL HAVE A SHARED DRIVEWAY TO BE CONSTRUCTED BY THE DEVELOPER AND INCLUDED IN DRAINAGE AND DRAINAGE EASEMENTS.
11. MOUNTAIN VIEW ELECTRIC ASSOC. REQUIRES THAT THEIR EASEMENTS BE EXCLUSIVE OF GRADING AND DRAINAGE EASEMENTS.
12. A 16' WIDE GRAVEL DRIVEWAY AND CULVERT SHALL BE CONSTRUCTED OVER THE DRAINAGE EASEMENT LOCATED ON LOT NO. 5. SAID DRIVEWAY TO BE CONSTRUCTED BY THE DEVELOPER AND INCLUDED WITHIN THE SUBDIVISION'S ESTIMATE OF GUARANTEED FUNDS.
13. DRIVEWAY ACCESS TO LOT NO. 5 SHALL BE LIMITED TO FLAMING SUN DRIVE.
14. THE DEVELOPER SHALL BE RESPONSIBLE FOR CONSTRUCTING THE DRIVEWAY AND INCLUDING THE COST OF THE CONSTRUCTION SHALL BE INCLUDED WITHIN THE ESTIMATE OF GUARANTEED FUNDS.

DEVELOPMENT DATA

SINGLE FAMILY RESIDENTIAL	112.27 AC	83 %
OPEN SPACE TRACTS	1.79 AC	1.5 %
ROAD ROW	71.5 AC	5.5 %
TOTAL	121.21 AC	100 %

TOTAL NUMBER OF LOTS = 38
MINIMAL LOT SIZE = 2.50 AC
AVERAGE LOT SIZE = 2.86 AC
GROSS DENSITY = 1 LOT PER 3.19 AC
TOTAL LF OF ROW = 5192 LF

INDICATES WETLANDS

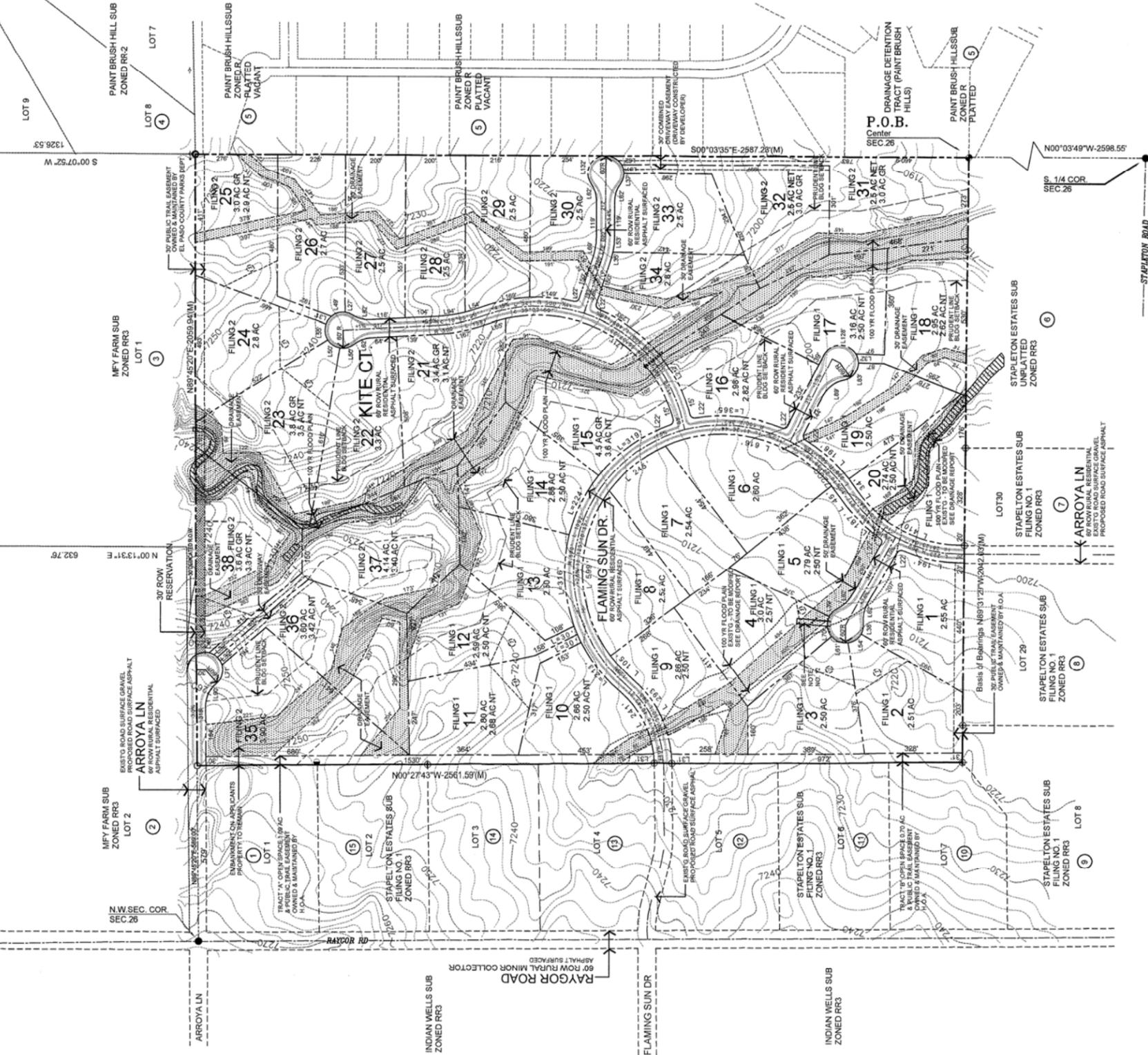
INDICATES MINIMUM FRONT YARD SETBACK AT MINIMUM 200 LOT WIDTH

PROPERTY OWNER:

JERRY L. LANDRESS
12585 BRIDLE BIT DRIVE
COLORADO SPRINGS, CO 80908
719.485.2145

MINERAL RIGHTS OWNER:

MOUNTAIN VIEW PROPERTIES OF PEYTON, LLP (50%)
12585 BRIDLE BIT DRIVE
P.O. BOX 194, PEYTON, COLORADO 80801
JERRY L. LANDRESS (50%)
12585 BRIDLE BIT DRIVE
COLORADO SPRINGS, CO 80908
719.485.2145



- ADJOINING PROPERTY OWNERS**
1. KRISTI S MARQUESS 10475 RAYGOR RD COLO SPGS CO 80908-4803
 2. US SPRINGS TRUST, 10535 RAYGOR RD COLO SPGS CO 80908-4421
 3. LARRY D & BONNIE L ROBERTS 10155 RAYGOR RD COLO SPGS CO 80908-4805
 4. DONALD M BLASUIS 10565 ARROYO LN COLO SPGS CO 80903-6883
 5. SIX NINETY NINE LA LLC 545 E PINES PEAK AVE COLO SPGS CO 80903-3653
 6. SANDRA M & GREGORY SMITH 9725 ARROYA LN COLORADO SPRINGS, CO 80908-4441
 7. DAVID L & KAREN B WOLFE 9825 ARROYA LN COLO SPGS CO 80909-4427
 8. JAMES D & APRIL D BORST 9850 ARROYA LN COLO SPGS CO 80909-4805
 9. CARL W SPRAY 9915 RAYGOR RD COLO SPGS CO 80909-4805
 10. LARRY D & BONNIE L ROBERTS 10155 RAYGOR RD COLO SPGS CO 80908-4805
 11. LARRY D & BONNIE L ROBERTS 10155 RAYGOR RD COLO SPGS CO 80908-4805
 12. LARRY D & BONNIE L ROBERTS 10155 RAYGOR RD COLO SPGS CO 80908-4805
 13. JASON & CHRISTINA MATHEWS 9750 FLAMING SUN DR 80909-4815
 14. RICHARD J & DOROTHY L FAVINGER 10295 RAYGOR RD COLO SPGS CO 80908-4805
 15. SUSAN G. WITTER, 10385 RAYGOR RD, COLO SPGS, CO 80908-4803

PARCEL NO. S 52260 00 001 & 52260 00 002
SCALE 1"=200'
CONT. INT. = 2'
25' 100' 500' 1000'



PRELIMINARY PLAN

EAGLEVIEW SUBDIVISION

LRA

EL PASO COUNTY, COLORADO

DEVELOPED BY: THE PRO-LAND GROUP LLC, 12585 BRIDLEBIT RD., COLORADO SPRINGS, CO 80908

LAND RESOURCE ASSOCIATES
4455 FOUNTAIN AVE
CASCADE, CO 80809
719-684-2298

Said tract contains 5,279,822.173 Square feet (121.208 Acres) more or less.

LAND DESCRIPTION

A portion of the Northwest One-Quarter (N.W.1/4) of Section 26, Township 12 South, Range 65 West of the 6th P.M., County of El Paso, State of Colorado, more particularly described as follows:
Beginning at the Center One-Quarter (1/4) Section corner of said Section 26; Thence N89°31'29"W, along the south line of said Northwest One-Quarter (N.W.1/4), a portion of said line being also a portion of the north boundary line of Stapleton Estates Filing No. 1, as recorded in Plat Book R-3 at Page 76 of the records of said County, a distance of 2042.03 feet to the most northeasterly common lot corner of Lots 7 and 8 of said Stapleton Estates Filing No. 1; Thence N00°27'43"W along a portion of the easterly boundary of said Stapleton Estates Filing No. 1, a distance of 2561.59 feet to a point on the north line of said Section 26, said point also being a point on the southerly boundary line of MFY Subdivision, as recorded in Plat Book T-3 at Page 93 of said records; Thence N89°45'20"E along said north line of said Section 26 and said south line of MFY Subdivision, a distance of 2059.94 feet to the North Quarter (N.1/4) Corner of said Section 26 and the most southwesterly corner of Point Brush Hill Filing No. 3, as recorded in Plat Book U-3 at Page 79 of said County; Thence S00°03'35"E along the North-South centerline of said Section 26, a distance of 2587.23 feet to the Point of Beginning.

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EPC DEVELOPMENT SERVICE

Appendix B

WATER SUPPLY INFORMATION SUMMARY

Section 30-28-133(d), C.R.S. requires that the applicant submit to the County, "Adequate evidence that a Water supply that is sufficient in terms of quantity, quality, and dependability will be available to ensure an adequate supply of water"

1. NAME OF DEVELOPMENT AS PROPOSED		<u>Eagleview Subdivision</u>	
2. LAND USE ACTION		<u>Replat</u>	
3. NAME OF EXISTING PARCEL AS RECORDED		<u>Eagleview Subdivision</u>	
SUBDIVISION	<u>See Above</u>	FILING	<u>N/A</u>
BLOCK	<u>N/A</u>	Lot	<u>N/A</u>
4. TOTAL ACERAGE	<u>121.21</u>	5. NUMBER OF LOTS PROPOSED	<u>28</u>
		PLAT MAPS ENCLOSED	<input checked="" type="checkbox"/>
6. PARCEL HISTORY - Please attach copies of deeds, plats, or other evidence or documentation. (In submittal package)			
A. Was parcel recorded with county prior to June 1, 1972?		<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
B. Has the parcel ever been part of a division of land action since June 1, 1972?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, describe the previous action <u>Platted but not recorded.</u>			
7. LOCATION OF PARCEL - Include a map delineating the project area and tie to a section corner. (In submittal)			
<u>NW 14</u> SECTION 26		TOWNSHIP <u>12</u>	<input type="checkbox"/> N <input checked="" type="checkbox"/> S RANGE <u>65</u>
		<input type="checkbox"/> E	<input checked="" type="checkbox"/> W
PRINCIPAL MERIDIAN: <input checked="" type="checkbox"/> 6TH <input type="checkbox"/> N.M. <input type="checkbox"/> UTE <input type="checkbox"/> COSTILLA			
8. PLAT - Location of all wells on property must be plotted and permit numbers provided.			
Surveyors plat <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		If not, scaled hand-drawn sketch Y <input type="checkbox"/> NO	
9. ESTIMATED WATER REQUIREMENTS - Gallons per Day or Acre Foot per Year		10. WATER SUPPLY SOURCE	
HOUSEHOLD USE # *	<u>38</u> of units <u>0.250</u> AF/SFE/YR <u>9.500</u> AF	<input checked="" type="checkbox"/> EXISTING <input type="checkbox"/> DEVELOPED	<input checked="" type="checkbox"/> NEW WELLS
COMMERCIAL USE	<u>-</u> SF <u>-</u> GPD <u>-</u> AF	WELLS SPRING WELL PERMIT NUMBERS	Proposed Aquifers - (Check One)
IRRIGATION # **	<u>0.0782</u> AF/1000SF <u>2,000</u> SF <u>5.943</u> AF		<input type="checkbox"/> Alluvial <input type="checkbox"/> Upper Arapahoe
ANIMAL WATERING # ***	<u>4</u> Horses <u>0.0159</u> AF/Horse/Year <u>2.4168</u> AF		<input checked="" type="checkbox"/> Upper Dawson <input type="checkbox"/> Lower Arapahoe
	GPD _____ AF _____		<input type="checkbox"/> Lower Dawson <input type="checkbox"/> Laramie Fox Hills
TOTAL	<u>15,944</u> GPD <u>17.86</u> AF *	<input type="checkbox"/> MUNICIPAL	WATER COURT DECREE CASE NUMBERS
* Per replacement plan No. 746-BD		<input type="checkbox"/> ASSOCIATION	<u>746-BD</u>
** Assuming 3,500 SF of irrigation per lot		<input type="checkbox"/> COMPANY	<u>746-BD (Replacement Plan)</u>
*** Per replacement plan No. 746-BD at 2 horses per lot		<input type="checkbox"/> DISTRICT	
		NAME: <u>N/A</u>	
		LETTER OF COMMITMENT FOR	
		SERVICE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
11. ENGINEER'S WATER SUPPLY REPORT <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		If yes, please forward with this form. (This may be required before our review is completed)	
12. TYPE OF SEWAGE DISPOSAL SYSTEM			
<input checked="" type="checkbox"/> SEPTIC TANK/LEACH FIELD		<input type="checkbox"/> CENTRAL SYSTEM - DISTRICT NAME: _____	
<input type="checkbox"/> LAGOON		<input type="checkbox"/> VAULT - LOCATION SEWAGE HAULED TO: _____	
<input type="checkbox"/> ENGINEERED SYSTEM (Attach a copy of engineering design)		<input type="checkbox"/> OTHER: _____	

Appendix C

**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: JERRY R. LANDRESS

AQUIFER: LARAMIE-FOX HILLS

DETERMINATION NO.: **469-BD**

ROBERT C. "BOB" BALINK
08/02/2005 11:57:42 AM
Doc \$0.00 Page
Rec \$56.00 1 of 11

El Paso County, CO



205117858

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

FINDINGS

1. The application was received complete by the Colorado Ground Water Commission on December 2, 2002.
2. The applicant requests a determination of rights to designated ground water in the Laramie-Fox Hills Aquifer (hereinafter "aquifer") underlying 119.34 acres, generally described as part of the NW1/4 of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated November 25, 2002, the applicant owns the 119.34 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: domestic, livestock watering, irrigation, commercial, and replacement supply. The applicant's proposed place of use of the allocated ground water is the above described 119.34 acre land area.
6. The quantity of water in the aquifer underlying the 119.34 acres of land claimed by the applicant is 3,311 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 15 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 185 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 the 119.34 acres of overlying land claimed by the applicant is 33.1 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. 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 119.34 acres of 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.
 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 March 12, 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 in response to this request.
 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 March 20 and 27, 2003.
17.
 - a. On April 9, 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-07. No other objection to the proposed determination of water right was received within the time limit set by statute.
 - b. By Order of the Commission Hearing Officer, dated June 23, 2003, a hearing in Case No. 03-GW-07 was scheduled for August 20, 2003.
 - c. Prior to the scheduled hearing in Case No. 03-GW-07, the Staff of the Commission filed a Motion for Summary Judgment, dated August 12, 2003. By Order of the Commission Hearing Officer, dated September 29, 2003, attached hereto as Exhibit B, this Motion for Summary Judgment was granted and the subject application was remanded to Staff to take the administrative steps required to proceed with the issuance of the determination of water right.
 - d. On October 22, 2003, the objector filed a timely exception to the Hearing Officer's initial decision in Case No. 03-GW-07.
 - e. By Order of the Commission dated December 19, 2003, a hearing on appeal of the initial decision of the Hearing Officer in Case No. 03-GW-07 was scheduled before the Commission, on February 24, 2004.
 - f. On February 5, 2004, the objector withdrew its request for an appeal of the initial decision of the Hearing Officer in Case No. 03-GW-07. By Order of the Commission dated February 6, 2004, the scheduled hearing in this case was vacated and the initial decision of the Hearing Officer in this case is the Final Order of the Commission.
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 Laramie-Fox Hills Aquifer underlying 119.34 acres, generally described as part of the NW1/4 of Section 26, Township 12 South, Range 65 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 33.1 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. 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.
22. The use of ground water from this allocation shall be limited to the following uses: domestic, livestock watering, irrigation, commercial, and replacement supply. The place of use shall be limited to the above described 119.34 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 119.34 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 119.34 acre overlying land area.
 - b. The wells must be constructed to withdraw water from only the Laramie-Fox Hills 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.

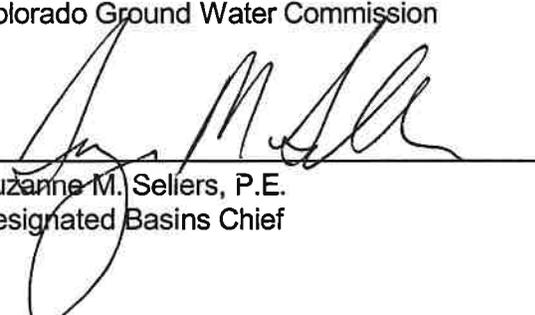
- e. The wells may withdraw the allowed average annual amount of water from the aquifer together in any combination. The total combined annual withdrawal of the wells shall not exceed the allowed average annual amount described in this Order.
- f. A totalizing flow meter or other Commission approved 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 119.34 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 22nd day of April, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By: _____



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

Prepared by: RAC

FIND-463

EXHIBIT A

Page 1 of 2

GWS-1 (Rev, Sept 1996)

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

NONTRIBUTARY GROUND WATER LANDOWNERSHIP STATEMENT

I (we) Jerry R Landress
(Name)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 119.34 acres in the County of El Paso, State of Colorado:

See attached legal Description

and, that the ground water sought to be withdrawn from the Laramie Fox Hills aquifer underlying the above-described land has not been conveyed or reserved to another, nor has consent been given to it's withdrawal by another.

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

Jerry R. Landress 11/25/02
(Signature) (Date)

(Signature) (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.

EXHIBIT A

Page 2 of 2

A PORTION OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO. MORE PARTICULARLY DESCRIBED AS FOLLOWS, BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 26, AS ACCEPTED AND USED IN THE PLATS OF MFY FARM SUBDIVISION AND PAINT BRUSH HILLS FILING NO. 3, RECORDED IN PLAT BOOK T-3 AT PAGE 93 AND PLAT BOOK U-3 AT PAGE 79, RESPECTIVELY, OF THE RECORDS OF SAID EL PASO COUNTY; THENCE SOUTH $00^{\circ} 04' 34''$ EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 26, 2587.32 FEET TO THE CENTER CORNER OF SAID SECTION 26; THENCE NORTH $89^{\circ} 31' 29''$ WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 26, 978.90 FEET TO THE NORTHEAST CORNER OF LOT 30 OF STAPLETON ESTATES FILING NO. 1 AS RECORDED IN PLAT BOOK R-3 AT PAGE 76 OF THE RECORDS OF SAID EL PASO COUNTY; THENCE CONTINUING ALONG THE BOUNDARY LINE OF SAID STAPLETON ESTATES FILING NO. 1, NORTH $89^{\circ} 31' 29''$ WEST ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 26, 1032.07 FEET; THENCE NORTH $00^{\circ} 26' 34''$ WEST, 2561.56 FEET TO A POINT ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 26; THENCE NORTH $89^{\circ} 44' 28''$ EAST ALONG THE SOUTHERLY BOUNDARY LINE OF SAID MFY FARM SUBDIVISION, 2028.76 FEET TO THE POINT OF BEGINNING. CONTAINING 119.34 ACRES

BEFORE THE GROUND WATER COMMISSION, STATE OF COLORADO

Case No. 03-GW-07

ORDER

IN THE MATTER OF AN OBJECTION TO APPLICATIONS FOR DETERMINATION OF WATER RIGHT TO ALLOW THE APPROPRIATION OF DESIGNATED GROUND WATER FROM THE LARAMIE-FOX HILLS, ARAPAHOE, DENVER, AND DAWSON AQUIFERS UNDERLYING A 119.34-ACRE PROPERTY LOCATED IN THE UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN AND GROUND WATER MANAGEMENT DISTRICT IN EL PASO COUNTY (RECEIPT NO. 502360-A, B, C, AND D).

JERRY R. LANDRESS, APPLICANT

Staff for the Colorado Ground Water Commission seeks summary judgment on two issues in the above captioned matter. They are: (1) whether the applications for determinations of water rights are speculative, and (2) if the applications are granted, whether any Commission Order entered should note that the Applicant is bound by all valid, existing District rules in the permitting process. The second issue is more appropriately a request for a determination of law pursuant to C.R.C.P. 56(h) and will be dealt with first.

1. Should the Commission's orders approving applications for water rights notify the Applicant of District rules that may affect his rights?

The applications herein seek determinations of water rights and are not applications for well permits. Therefore, the District's argument requesting inclusion of "notification verbiage" in any order granting water rights to the Applicant is premature.

The Colorado Supreme Court has made it extremely clear that "[t]he District's jurisdiction begins after the Commission has issued a permit, and that occurs after the Commission has determined the water right. The District possesses no jurisdiction with respect to the Commission's determination of the water use right. As provided by § 37-90-107(7)(c)(I), "Any person desiring to obtain such a determination [of a use right to designated ground water within the Denver Basin] shall make application to the [C]ommission . . ." (emphasis added)." Colorado Ground Water Commission v. North Kiowa-Bijou Groundwater Management District, No. 02SA216, slip op. at 36 (Colo. Sup Ct., September 8, 2003). Further, in Upper Black Squirrel Creek v. Goss, 993 P.2d 1177, 1189 (Colo. 2000), the Supreme

Court stated, “[t]he Management District’s rules, its control and conservation measures, ... apply to the Commission’s injury analysis in the permitting phase....”. Therefore, the applicability and effect of District rules is not relevant to the resolution of this determination of water right application.

2. Whether the applications for determinations of water rights are speculative.

“Under C.R.C.P. 56(c), summary judgment is proper only when the pleadings, affidavits, depositions, or admissions show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The burden of establishing that there is no genuine issue of material fact is on the moving party. Once the moving party has met the initial burden of production, the burden shifts to the non-moving party to establish that there is a triable issue of fact.” Burman v. Richmond Homes Ltd., 821 P.2d 913, 917 (Colo. App. 1991).

Staff for the Colorado Ground Water Commission has met its initial burden of establishing that there is no genuine issue of material fact. It is undisputed that the Applicant filed applications for determinations of water right pursuant to § 37-90-107(7), C.R.S. (2002), on forms prescribed by the Commission. It is undisputed that the Applicant owns the land under which a determination of the amount of water available is sought. It is undisputed that the Applicant identifies its own overlying land as the place of use. It is undisputed that the Applicant identified domestic, livestock, irrigation, commercial and replacement supply as proposed beneficial uses. It is undisputed that the applications for determinations of water rights were properly filed and notice was provided in the manner required by law.¹

The District has failed to set forth specific facts or evidence that there is a genuine issue for trial. Lacking “an affirmative showing of specific facts probative of a right to judgment uncontradicted by any counter-affidavits submitted leaves a trial court with no alternative but to conclude that no genuine issue of material fact exists.” Id. at 917. The District provides no affidavits or facts to indicate that the Applicant has not complied with the Commission’s criteria for determining whether an application for determination of water rights is speculative. The District merely argues that based on the information provided by the Applicant (and as required by law), that the Applicant may be requesting too much water based on District Rules. It is the Commission’s criteria, not the District’s rules, that are applicable to the determination of water right proceeding.

The Commission, and not the District, has the responsibility to determine a water use right. “...section 37-90-107(7) vests the Commission with the authority to determine a water use right for the withdrawal of designated Denver Basin ground

¹ The Hearing Officer notes that “[t]he District generally agrees that the facts stated in the Staff’s Motion at page 2 are undisputed.” See page 2 of the District’s Response.

water to overlying landowners, or those acting with landowner consent, provided that the land lies within the boundaries of a designated ground water basin located in the Denver Basin. The Commission determines the applicant's use right, that is, a specific entitlement to use a quantity of designated Denver Basin ground water underneath the land, which constitutes a final determination of the water right subject to the Commission's authority to adjust this amount to conform to the actual aquifer characteristics encountered upon drilling the well or test holes." Colo. Ground Water Comm. v. North Kiowa-Bijou, at 32. Under this authority, the Commission has set forth criteria to determine whether an application is speculative and per the affidavit of Mr. Fronzcak, the Applicant has met that criteria and the Staff for the Commission has determined that the application for a determination of water right will not create unreasonable waste pursuant to that criteria. The District has presented no other evidence or facts that would affect the outcome of the determination pursuant to the Commission's evaluation criteria regarding the anti-speculation doctrine.

The District also argues that the motion for summary judgment should not be granted because the record in this matter is not sufficiently developed per Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984). The Hearing Officer disagrees. Based on the evidence provided by Staff and the Applicant sufficient facts have been presented and established to make a determination based on Commission criteria that the applications are not speculative.

ORDER

- A) Based on the facts presented and contained in the application and the affidavit presented by the Staff for the Colorado Ground Water Commission, the Applicant has satisfied the Commission's criteria and the application is not speculative.
- B) As a matter of law, the applicability and effect of District rules is not relevant to the resolution of this determination of water right application.
- C) The Motion for Summary Judgment is granted. This matter is remanded to Staff to take the administrative steps required to proceed with the issuance of the determination of water rights.

Dated this 29th day of September 2003.


Joseph (Jody) Grantham, Hearing Officer
1313 Sherman Street, Room 818
Denver, CO 80203
Telephone: (303) 866-358

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the within **ORDER** upon all parties herein by depositing copies of the same in the United States mail, postage prepaid, at Denver, Colorado, this 30th day of September 2003, addressed as follows:

Wayne B. Schroeder
Grimshaw & Haring
1700 Lincoln St., Ste. 3800
Denver, CO 80203

P. Andrew Jones
Lind, Lawrence & Ottenhoff
1011 Eleventh Avenue
Greeley, CO 80631

HAND DELIVERED:

Matt Poznanovic
Attorney General's Office
1525 Sherman Street, 5th Floor
Denver, CO 80203

~~Rich Cooper~~
Office of the State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203

William Fronczak
Office of the State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203



**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: JERRY R. LANDRESS

AQUIFER: ARAPAHOE

DETERMINATION NO.: **470-BD**

ROBERT C. "BOB" BALINK El Paso County, CO

08/02/2005 11:57:42 AM

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Rec \$56.00 1 of 11



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

FINDINGS

1. The application was received complete by the Colorado Ground Water Commission on December 2, 2002.
2. The applicant requests a determination of rights to designated ground water in the Arapahoe Aquifer (hereinafter "aquifer") underlying 119.34 acres, generally described as part of the NW1/4 of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated November 25, 2002, the applicant owns the 119.34 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: domestic, livestock watering, irrigation, commercial, and replacement supply. The applicant's proposed place of use of the allocated ground water is the above described 119.34 acre land area.
6. The quantity of water in the aquifer underlying the 119.34 acres of land claimed by the applicant is 4,666 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 230 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 the 119.34 acres of overlying land claimed by the applicant is 46.7 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 119.34 acres of 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.
 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 March 12, 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 in response to this request.
 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 March 20 and 27, 2003.
17.
 - a. On April 9, 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-07. No other objection to the proposed determination of water right was received within the time limit set by statute.
 - b. By Order of the Commission Hearing Officer, dated June 23, 2003, a hearing in Case No. 03-GW-07 was scheduled for August 20, 2003.
 - c. Prior to the scheduled hearing in Case No. 03-GW-07, the Staff of the Commission filed a Motion for Summary Judgment, dated August 12, 2003. By Order of the Commission Hearing Officer, dated September 29, 2003, attached hereto as Exhibit B, this Motion for Summary Judgment was granted and the subject application was remanded to Staff to take the administrative steps required to proceed with the issuance of the determination of water right.
 - d. On October 22, 2003, the objector filed a timely exception to the Hearing Officer's initial decision in Case No. 03-GW-07.
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 - f. On February 5, 2004, the objector withdrew its request for an appeal of the initial decision of the Hearing Officer in Case No. 03-GW-07. By Order of the Commission dated February 6, 2004, the scheduled hearing in this case was vacated and the initial decision of the Hearing Officer in this case is the Final Order of the Commission.
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.

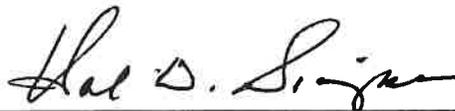
ORDER

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 Arapahoe Aquifer underlying 119.34 acres, generally described as part of the NW1/4 of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, is approved subject to the following conditions:

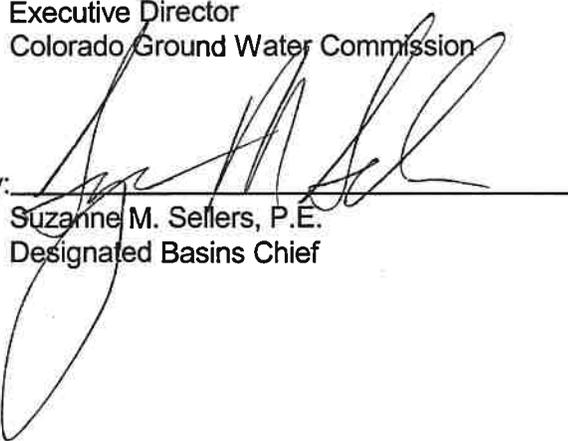
19. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed 46.7 acre-feet. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn does not exceed the product 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. 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.
22. The use of ground water from this allocation shall be limited to the following uses: domestic, livestock watering, irrigation, commercial, and replacement supply. The place of use shall be limited to the above described 119.34 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 119.34 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 119.34 acre overlying land area.
 - b. The wells must be constructed to withdraw water from only the Arapahoe 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. 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 119.34 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 22nd day of April, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By: 

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

Prepared by: RAC

FIND-465

EXHIBIT A

Page 1 of 2

GWS-1 (Rev, Sept 1996)

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

NONTRIBUTARY GROUND WATER LANDOWNERSHIP STATEMENT

I (we) Jerry R Landress

(Name)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 119.34 acres in the County of El Paso, State of Colorado:

See attached legal Description

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

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



(Signature) (Date)

(Signature) (Date)

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EXHIBIT A

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BEFORE THE GROUND WATER COMMISSION, STATE OF COLORADO

Case No. 03-GW-07

ORDER

IN THE MATTER OF AN OBJECTION TO APPLICATIONS FOR DETERMINATION OF WATER RIGHT TO ALLOW THE APPROPRIATION OF DESIGNATED GROUND WATER FROM THE LARAMIE-FOX HILLS, ARAPAHOE, DENVER, AND DAWSON AQUIFERS UNDERLYING A 119.34-ACRE PROPERTY LOCATED IN THE UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN AND GROUND WATER MANAGEMENT DISTRICT IN EL PASO COUNTY (RECEIPT NO. 502360-A, B, C, AND D).

JERRY R. LANDRESS, APPLICANT

Staff for the Colorado Ground Water Commission seeks summary judgment on two issues in the above captioned matter. They are: (1) whether the applications for determinations of water rights are speculative, and (2) if the applications are granted, whether any Commission Order entered should note that the Applicant is bound by all valid, existing District rules in the permitting process. The second issue is more appropriately a request for a determination of law pursuant to C.R.C.P. 56(h) and will be dealt with first.

1. Should the Commission's orders approving applications for water rights notify the Applicant of District rules that may affect his rights?

The applications herein seek determinations of water rights and are not applications for well permits. Therefore, the District's argument requesting inclusion of "notification verbiage" in any order granting water rights to the Applicant is premature.

The Colorado Supreme Court has made it extremely clear that "[t]he District's jurisdiction begins after the Commission has issued a permit, and that occurs after the Commission has determined the water right. The District possesses no jurisdiction with respect to the Commission's determination of the water use right. As provided by § 37-90-107(7)(c)(I), "Any person desiring to obtain such a determination [of a use right to designated ground water within the Denver Basin] shall make application to the [C]ommission . . ." (emphasis added)." Colorado Ground Water Commission v. North Kiowa-Bijou Groundwater Management District, No. 02SA216, slip op. at 36 (Colo. Sup Ct., September 8, 2003). Further, in Upper Black Squirrel Creek v. Goss, 993 P.2d 1177, 1189 (Colo. 2000), the Supreme

Court stated, “[t]he Management District’s rules, its control and conservation measures, ... apply to the Commission’s injury analysis in the permitting phase....”. Therefore, the applicability and effect of District rules is not relevant to the resolution of this determination of water right application.

2. Whether the applications for determinations of water rights are speculative.

“Under C.R.C.P. 56(c), summary judgment is proper only when the pleadings, affidavits, depositions, or admissions show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The burden of establishing that there is no genuine issue of material fact is on the moving party. Once the moving party has met the initial burden of production, the burden shifts to the non-moving party to establish that there is a triable issue of fact.” Burman v. Richmond Homes Ltd., 821 P.2d 913, 917 (Colo. App. 1991).

Staff for the Colorado Ground Water Commission has met its initial burden of establishing that there is no genuine issue of material fact. It is undisputed that the Applicant filed applications for determinations of water right pursuant to § 37-90-107(7), C.R.S. (2002), on forms prescribed by the Commission. It is undisputed that the Applicant owns the land under which a determination of the amount of water available is sought. It is undisputed that the Applicant identifies its own overlying land as the place of use. It is undisputed that the Applicant identified domestic, livestock, irrigation, commercial and replacement supply as proposed beneficial uses. It is undisputed that the applications for determinations of water rights were properly filed and notice was provided in the manner required by law.¹

The District has failed to set forth specific facts or evidence that there is a genuine issue for trial. Lacking “an affirmative showing of specific facts probative of a right to judgment uncontradicted by any counter-affidavits submitted leaves a trial court with no alternative but to conclude that no genuine issue of material fact exists.” Id. at 917. The District provides no affidavits or facts to indicate that the Applicant has not complied with the Commission’s criteria for determining whether an application for determination of water rights is speculative. The District merely argues that based on the information provided by the Applicant (and as required by law), that the Applicant may be requesting too much water based on District Rules. It is the Commission’s criteria, not the District’s rules, that are applicable to the determination of water right proceeding.

The Commission, and not the District, has the responsibility to determine a water use right. “...section 37-90-107(7) vests the Commission with the authority to determine a water use right for the withdrawal of designated Denver Basin ground

¹ The Hearing Officer notes that “[t]he District generally agrees that the facts stated in the Staff’s Motion at page 2 are undisputed.” See page 2 of the District’s Response.

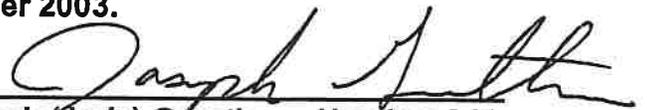
water to overlying landowners, or those acting with landowner consent, provided that the land lies within the boundaries of a designated ground water basin located in the Denver Basin. The Commission determines the applicant's use right, that is, a specific entitlement to use a quantity of designated Denver Basin ground water underneath the land, which constitutes a final determination of the water right subject to the Commission's authority to adjust this amount to conform to the actual aquifer characteristics encountered upon drilling the well or test holes." Colo. Ground Water Comm. v. North Kiowa-Bijou, at 32. Under this authority, the Commission has set forth criteria to determine whether an application is speculative and per the affidavit of Mr. Fronzcak, the Applicant has met that criteria and the Staff for the Commission has determined that the application for a determination of water right will not create unreasonable waste pursuant to that criteria. The District has presented no other evidence or facts that would affect the outcome of the determination pursuant to the Commission's evaluation criteria regarding the anti-speculation doctrine.

The District also argues that the motion for summary judgment should not be granted because the record in this matter is not sufficiently developed per Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984). The Hearing Officer disagrees. Based on the evidence provided by Staff and the Applicant sufficient facts have been presented and established to make a determination based on Commission criteria that the applications are not speculative.

ORDER

- A) Based on the facts presented and contained in the application and the affidavit presented by the Staff for the Colorado Ground Water Commission, the Applicant has satisfied the Commission's criteria and the application is not speculative.
- B) As a matter of law, the applicability and effect of District rules is not relevant to the resolution of this determination of water right application.
- C) The Motion for Summary Judgment is granted. This matter is remanded to Staff to take the administrative steps required to proceed with the issuance of the determination of water rights.

Dated this 29th day of September 2003.


Joseph (Jody) Grantham, Hearing Officer
1313 Sherman Street, Room 818
Denver, CO 80203
Telephone: (303) 866-358

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the within **ORDER** upon all parties herein by depositing copies of the same in the United States mail, postage prepaid, at Denver, Colorado, this 30th day of September 2003, addressed as follows:

Wayne B. Schroeder
Grimshaw & Haring
1700 Lincoln St., Ste. 3800
Denver, CO 80203

P. Andrew Jones
Lind, Lawrence & Ottenhoff
1011 Eleventh Avenue
Greeley, CO 80631

HAND DELIVERED:

Matt Poznanovic
Attorney General's Office
1525 Sherman Street, 5th Floor
Denver, CO 80203

Rick Cooper
Office of the State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203

William Fronczak
Office of the State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203

Susan C. Garcia

**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: JERRY R. LANDRESS

ROBERT C. "BOB" BALINK

El Paso County, CO

AQUIFER: DENVER

08/02/2005 11:57:42 AM

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205117860

DETERMINATION NO.: **471-BD**

In compliance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, Jerry R. Landress (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 December 2, 2002.
2. The applicant requests a determination of rights to designated ground water in the Denver Aquifer (hereinafter "aquifer") underlying 119.34 acres, generally described as part of the NW1/4 of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated November 25, 2002, the applicant owns the 119.34 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: domestic, livestock watering, irrigation, commercial, and replacement supply. The applicant's proposed place of use of the allocated ground water is the above described 119.34 acre land area.
6. The quantity of water in the aquifer underlying the 119.34 acres of land claimed by the applicant is 6,188 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 305 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 the 119.34 acres of overlying land claimed by the applicant is 61.9 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 119.34 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. Also, the location of the land claimed by the applicant is farther 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 March 12, 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 in response to this request.

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 March 20 and 27, 2003.
17.
 - a. On April 9, 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-07. No other objection to the proposed determination of water right was received within the time limit set by statute.
 - b. By Order of the Commission Hearing Officer, dated June 23, 2003, a hearing in Case No. 03-GW-07 was scheduled for August 20, 2003.
 - c. Prior to the scheduled hearing in Case No. 03-GW-07, the Staff of the Commission filed a Motion for Summary Judgment, dated August 12, 2003. By Order of the Commission Hearing Officer, dated September 29, 2003, attached hereto as Exhibit B, this Motion for Summary Judgment was granted and the subject application was remanded to Staff to take the administrative steps required to proceed with the issuance of the determination of water right.
 - d. On October 22, 2003, the objector filed a timely exception to the Hearing Officer's initial decision in Case No. 03-GW-07.
 - e. By Order of the Commission dated December 19, 2003, a hearing on appeal of the initial decision of the Hearing Officer in Case No. 03-GW-07 was scheduled before the Commission, on February 24, 2004.
 - f. On February 5, 2004, the objector withdrew its request for an appeal of the initial decision of the Hearing Officer in Case No. 03-GW-07. By Order of the Commission dated February 6, 2004, the scheduled hearing in this case was vacated and the initial decision of the Hearing Officer in this case is the Final Order of the Commission.
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.

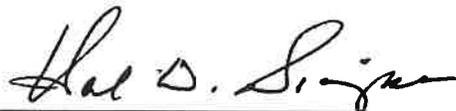
ORDER

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 119.34 acres, generally described as part of the NW1/4 of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, is approved subject to the following conditions:

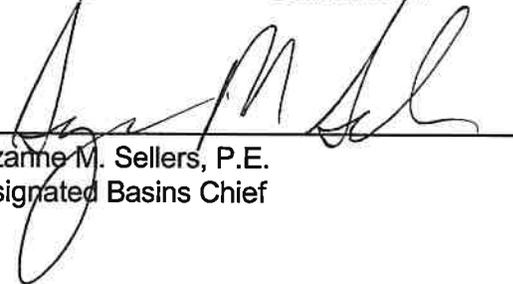
19. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed 61.9 acre-feet. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of water withdrawn does not exceed the product 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. 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.
22. The use of ground water from this allocation shall be limited to the following uses: domestic, livestock watering, irrigation, commercial, and replacement supply. The place of use shall be limited to the above described 119.34 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 119.34 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 119.34 acre overlying land area.
 - 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. 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 119.34 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 22nd day of April, 2004.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

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

Prepared by: RAC

FIND-466

EXHIBIT A

Page 1 of 2

GWS-1 (Rev, Sept 1996)

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

NONTRIBUTARY GROUND WATER LANDOWNERSHIP STATEMENT

I (we) Jerry R Landress

(Name)

claim and say that I (we) am (are) the owner(s) of the following described property
consisting of 119.34 acres in the County of El Paso, State
of Colorado:

See attached legal Description

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 it's withdrawal by another.

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

Jerry R Landress 10/25/02

(Signature) (Date)

(Signature) (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.

EXHIBIT A

Page 2 of 2

A PORTION OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO. MORE PARTICULARLY DESCRIBED AS FOLLOWS, BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 26, AS ACCEPTED AND USED IN THE PLATS OF MFY FARM SUBDIVISION AND PAINT BRUSH HILLS FILING NO. 3, RECORDED IN PLAT BOOK T-3 AT PAGE 93 AND PLAT BOOK U-3 AT PAGE 79, RESPECTIVELY, OF THE RECORDS OF SAID EL PASO COUNTY; THENCE SOUTH $00^{\circ} 04' 34''$ EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 26, 2587.32 FEET TO THE CENTER CORNER OF SAID SECTION 26; THENCE NORTH $89^{\circ} 31' 29''$ WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 26, 978.90 FEET TO THE NORTHEAST CORNER OF LOT 30 OF STAPLETON ESTATES FILING NO. 1 AS RECORDED IN PLAT BOOK R-3 AT PAGE 76 OF THE RECORDS OF SAID EL PASO COUNTY; THENCE CONTINUING ALONG THE BOUNDARY LINE OF SAID STAPLETON ESTATES FILING NO. 1, NORTH $89^{\circ} 31' 29''$ WEST ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 26, 1032.07 FEET; THENCE NORTH $00^{\circ} 26' 34''$ WEST, 2561.56 FEET TO A POINT ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 26; THENCE NORTH $89^{\circ} 44' 28''$ EAST ALONG THE SOUTHERLY BOUNDARY LINE OF SAID MFY FARM SUBDIVISION, 2028.76 FEET TO THE POINT OF BEGINNING. CONTAINING 119.34 ACRES

BEFORE THE GROUND WATER COMMISSION, STATE OF COLORADO

Case No. 03-GW-07

ORDER

IN THE MATTER OF AN OBJECTION TO APPLICATIONS FOR DETERMINATION OF WATER RIGHT TO ALLOW THE APPROPRIATION OF DESIGNATED GROUND WATER FROM THE LARAMIE-FOX HILLS, ARAPAHOE, DENVER, AND DAWSON AQUIFERS UNDERLYING A 119.34-ACRE PROPERTY LOCATED IN THE UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN AND GROUND WATER MANAGEMENT DISTRICT IN EL PASO COUNTY (RECEIPT NO. 502360-A, B, C, AND D).

JERRY R. LANDRESS, APPLICANT

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1. Should the Commission's orders approving applications for water rights notify the Applicant of District rules that may affect his rights?

The applications herein seek determinations of water rights and are not applications for well permits. Therefore, the District's argument requesting inclusion of "notification verbiage" in any order granting water rights to the Applicant is premature.

The Colorado Supreme Court has made it extremely clear that "[t]he District's jurisdiction begins after the Commission has issued a permit, and that occurs after the Commission has determined the water right. The District possesses no jurisdiction with respect to the Commission's determination of the water use right. As provided by § 37-90-107(7)(c)(I), "Any person desiring to obtain such a determination [of a use right to designated ground water within the Denver Basin] shall make application to the [C]ommission . . ." (emphasis added)." Colorado Ground Water Commission v. North Kiowa-Bijou Groundwater Management District, No. 02SA216, slip op. at 36 (Colo. Sup Ct., September 8, 2003). Further, in Upper Black Squirrel Creek v. Goss, 993 P.2d 1177, 1189 (Colo. 2000), the Supreme

Court stated, "[t]he Management District's rules, its control and conservation measures, ... apply to the Commission's injury analysis in the permitting phase....". Therefore, the applicability and effect of District rules is not relevant to the resolution of this determination of water right application.

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"Under C.R.C.P. 56(c), summary judgment is proper only when the pleadings, affidavits, depositions, or admissions show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The burden of establishing that there is no genuine issue of material fact is on the moving party. Once the moving party has met the initial burden of production, the burden shifts to the non-moving party to establish that there is a triable issue of fact." Burman v. Richmond Homes Ltd., 821 P.2d 913, 917 (Colo. App. 1991).

Staff for the Colorado Ground Water Commission has met its initial burden of establishing that there is no genuine issue of material fact. It is undisputed that the Applicant filed applications for determinations of water right pursuant to § 37-90-107(7), C.R.S. (2002), on forms prescribed by the Commission. It is undisputed that the Applicant owns the land under which a determination of the amount of water available is sought. It is undisputed that the Applicant identifies its own overlying land as the place of use. It is undisputed that the Applicant identified domestic, livestock, irrigation, commercial and replacement supply as proposed beneficial uses. It is undisputed that the applications for determinations of water rights were properly filed and notice was provided in the manner required by law.¹

The District has failed to set forth specific facts or evidence that there is a genuine issue for trial. Lacking "an affirmative showing of specific facts probative of a right to judgment uncontradicted by any counter-affidavits submitted leaves a trial court with no alternative but to conclude that no genuine issue of material fact exists." Id. at 917. The District provides no affidavits or facts to indicate that the Applicant has not complied with the Commission's criteria for determining whether an application for determination of water rights is speculative. The District merely argues that based on the information provided by the Applicant (and as required by law), that the Applicant may be requesting too much water based on District Rules. It is the Commission's criteria, not the District's rules, that are applicable to the determination of water right proceeding.

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The District also argues that the motion for summary judgment should not be granted because the record in this matter is not sufficiently developed per Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984). The Hearing Officer disagrees. Based on the evidence provided by Staff and the Applicant sufficient facts have been presented and established to make a determination based on Commission criteria that the applications are not speculative.

ORDER

- A) Based on the facts presented and contained in the application and the affidavit presented by the Staff for the Colorado Ground Water Commission, the Applicant has satisfied the Commission's criteria and the application is not speculative.
- B) As a matter of law, the applicability and effect of District rules is not relevant to the resolution of this determination of water right application.
- C) The Motion for Summary Judgment is granted. This matter is remanded to Staff to take the administrative steps required to proceed with the issuance of the determination of water rights.

Dated this 29th day of September 2003.


Joseph (Jody) Grantham, Hearing Officer
1313 Sherman Street, Room 818
Denver, CO 80203
Telephone: (303) 866-358

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the within **ORDER** upon all parties herein by depositing copies of the same in the United States mail, postage prepaid, at Denver, Colorado, this 30th day of September 2003, addressed as follows:

Wayne B. Schroeder
Grimshaw & Haring
1700 Lincoln St., Ste. 3800
Denver, CO 80203

P. Andrew Jones
Lind, Lawrence & Ottenhoff
1011 Eleventh Avenue
Greeley, CO 80631

HAND DELIVERED:

Matt Poznanovic
Attorney General's Office
1525 Sherman Street, 5th Floor
Denver, CO 80203

~~Rich Cooper~~
Office of the State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203

William Fronczak
Office of the State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203



**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: JERRY R. LANDRESS

AQUIFER: DAWSON

DETERMINATION NO.: **746-BD**

ROBERT C. "BOB" BALINK El Paso County, CO

08/02/2005 11:57:42 AM

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Rec \$36.00 1 of 7



In compliance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, 2 CCR 410-1, Jerry R. Landress (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 complete by the Colorado Ground Water Commission on December 17, 2004.
2. The applicant requests a determination of rights to designated ground water in the Dawson Aquifer (hereinafter "aquifer") underlying 119.34 acres, generally described as part of the NW¼ of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated November 25, 2002, the applicant owns the 119.34 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: domestic, livestock watering, irrigation, commercial, industrial and replacement supply. The applicant's proposed place of use of the allocated ground water is the above described 119.34 acre land area.
6. The quantity of water in the aquifer underlying the 119.34 acres of land claimed by the applicant is 5,370 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 20 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 225 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 the 119.34 acres of overlying land claimed by the applicant is 53.7 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 119.34 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 that previously existing allocations affecting the aquifer within the subject area have been cancelled, and as a result the water in the aquifer underlying the land claimed by the applicant is currently unallocated or otherwise permitted for withdrawal.
 12. The ground water in the aquifer underlying the above described land area was previously allocated to the applicant in the Findings and Order of the Commission for Determination of Water Right No. 472-BD, dated October 2, 2001. At the request of the applicant, approval of these Findings and Order will result in cancellation of Determination of Water Right No. 472-BD.
 13. 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.

14. 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.
15. On February 23, 2005, 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.
16. The Commission Staff has evaluated the application relying on the claims to control of the ground water in the aquifer made by the applicant.
17. In accordance with Sections 37-90-107(7) and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on March 3 and 10, 2005.
18. No objections to the determination of water right and proposed allocation of ground water were received within the time limit set by statute.
19. 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 Dawson Aquifer underlying 119.34 acres of land, generally described as part of the NW¼ of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, is approved subject to the following conditions:

20. The allocated average annual amount of ground water to be withdrawn from the aquifer shall not exceed 53.7 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.
21. 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.

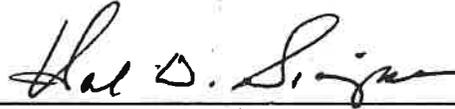
22. Commission approval of a replacement plan, providing for actual depletion of affected alluvial aquifers and adequate to prevent any material injury to existing water rights in such alluvial aquifers is required prior to approval of well permits for wells to be located on the overlying land area to withdraw ground water from the aquifer.
23. The use of ground water from this allocation shall be limited to the following beneficial uses: domestic, livestock watering, irrigation, commercial, industrial and replacement supply. The place of use shall be limited to the above described 119.34 acre land area.
24. 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 119.34 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.
25. The Findings and Order of the Commission for Determination of Water Right No. 472-BD, dated April 22, 2004 is hereby cancelled.
26. 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 119.34 acre overlying land area.
 - 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 the wells permitted under 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. 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.

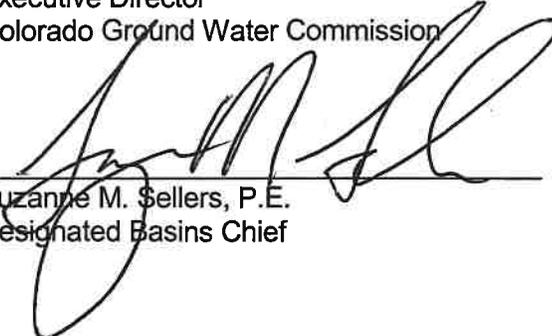
27. A copy of this Findings and Order shall be recorded by the applicant in the public records of the county – in which the claimed overlying land is located - so that a title examination of the above described 119.34 acre overlying land area, or any part thereof, shall reveal the existence of this determination.

Dated this 8th day of July, 2005.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By:



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

Prepared by: EBT

FIND-237-05

EXHIBIT A

Page 1 of 2

GWS-1 (Rev, Sept 1996)

RECEIVED

DEC 17 2004

WATER RESOURCES
STATE ENGINEER
COLO.

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

NONTRIBUTARY GROUND WATER LANDOWNERSHIP STATEMENT

I (we) Jerry R Landress
(Name)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 119.34 acres in the County of El Paso, State of Colorado:

See attached legal Description

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

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

Jerry R. Landress 11/25/02
(Signature) (Date)

(Signature) (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.

RECEIVED

DEC 17 2004

EXHIBIT A

Page 2 of 2

WATER RESOURCES
STATE ENGINEER
COLO.

A PORTION OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO. MORE PARTICULARLY DESCRIBED AS FOLLOWS, BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 26, AS ACCEPTED AND USED IN THE PLATS OF MFY FARM SUBDIVISION AND PAINT BRUSH HILLS FILING NO. 3, RECORDED IN PLAT BOOK T-3 AT PAGE 93 AND PLAT BOOK U-3 AT PAGE 79, RESPECTIVELY, OF THE RECORDS OF SAID EL PASO COUNTY; THENCE SOUTH $00^{\circ} 04' 34''$ EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 26, 2587.32 FEET TO THE CENTER CORNER OF SAID SECTION 26; THENCE NORTH $89^{\circ} 31' 29''$ WEST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 26, 978.90 FEET TO THE NORTHEAST CORNER OF LOT 30 OF STAPLETON ESTATES FILING NO. 1 AS RECORDED IN PLAT BOOK R-3 AT PAGE 76 OF THE RECORDS OF SAID EL PASO COUNTY; THENCE CONTINUING ALONG THE BOUNDARY LINE OF SAID STAPLETON ESTATES FILING NO. 1, NORTH $89^{\circ} 31' 29''$ WEST ALONG SAID SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 26, 1032.07 FEET; THENCE NORTH $00^{\circ} 26' 34''$ WEST, 2561.56 FEET TO A POINT ON THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 26; THENCE NORTH $89^{\circ} 44' 28''$ EAST ALONG THE SOUTHERLY BOUNDARY LINE OF SAID MFY FARM SUBDIVISION, 2028.76 FEET TO THE POINT OF BEGINNING. CONTAINING 119.34 ACRES

COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER

JERRY LANDRESS
12585 BRIDGE BLVD
COLORADO SPRINGS
CO 80908

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: JERRY R. LANDRESS

REPLACEMENT PLAN – DETERMINATION OF WATER RIGHT NO. 746-BD

In compliance with Section 37-90-107.5, CRS, and the Designated Basin Rules, 2 CCR 410-1, Jerry R. Landress (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. 746-BD.

FINDINGS

1. Pursuant to Section 37-90-107(7), CRS, in the Findings and Order dated July 8, 2005, the Ground Water Commission (hereinafter "Commission") approved a Determination of Water Right, No. 746-BD, for Jerry R. Landress. This determination of water right allows the allocation of ground water from the Dawson Aquifer (hereinafter "aquifer"), underlying 119.34 acres, generally described as part of the NW $\frac{1}{4}$ of Section 26, Township 12 South, Range 65 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 53.7 acre-feet.
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 119.34 acre land area was determined to be not-nontributary. Withdrawal of ground water from the aquifer underlying the above land area would impact the alluvial aquifer of Black Squirrel Creek or its tributaries, which has been determined by the Commission to be over-appropriated.

b. Commission approval of a replacement plan, providing for actual depletion to the alluvial aquifer of Black Squirrel Creek or its tributaries 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 119.34-acre land area is located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Water Management District. The Commission has jurisdiction.

ROBERT C. "BOB" BALINK El Paso County, CO

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6. a. The subject application for replacement plan was received complete by the Commission on December 15, 2004. Included in the application were proposed terms and conditions for administration of the plan and a summary of the replacement plan for publication.

b. As proposed by the applicant, the replacement plan would allow for use of an annual amount of 18 acre-feet of water for 38 rural single-family homes, each of which will have a non-evaporative septic system. The use of each of the wells would be limited to an annual withdrawal of 0.47 acre-feet of ground water to be used for household use, the irrigation of up to 2,000 square feet of lawn garden area, and the watering of four (4) domestic animals. Potentially, the water may also be used for commercial in-house business operations, provided that the annual withdrawal does not exceed 0.47 acre-feet.

c. The proposed source of replacement water would be return flows from in-house use of ground water, to be withdrawn from wells permitted in accordance with the conditions of the subject determination and proposed replacement plan.

d. Return flows would occur through individual on lot non-evaporative septic systems; which, if constructed to State and county health department standards, would not degrade water quality.

e. A totalizing flow meter will be installed on each well constructed to withdraw water from the Dawson aquifer allocation pursuant to Determination of Water Right 746-BD and this replacement plan.
7. Records in this office indicate that the applicant controls the water right to be used as a source of replacement water, Determination No. 746-BD.
8. In accordance with Rule 5.6.2 of the Designated Basin Rules, on February 23, 2005, 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 in response to this request.
9. In accordance with Sections 37-90-107.5 and 37-90-112, CRS, the application was published in the Ranchland News newspaper on March 3 and 10, 2005.
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 5.6.1 of the Designated Basin Rules, the replacement plan must be adequate to prevent any material injury to water rights of other appropriators. More specifically, the applicant's plan must replace any depletions to the alluvial aquifers of stream systems located within designated ground water basins and must prevent injury to the rights of appropriators that are withdrawing ground water from such alluvial aquifers.

- b. Operation of the replacement plan shall not cause unreasonable impairment of water quality of the receiving aquifer.
13.
 - 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.
14. 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. 746-BD, and subject to approval by the Commission.
15. Under conditions as stated in the following Order, no material injury to existing appropriators located within the Upper Black Squirrel Creek Designated Ground Water Basin, or any other designated ground water basin, will occur from approval of this replacement plan.

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 119.34 acres, generally described as part of the NW¼ of Section 26, Township 12 South, Range 65 West of the 6th Principal Meridian, in accordance with Determination of Water Right No. 746-BD, is approved subject to the following conditions:

16. Well permits for thirty-eight (38) 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 July 8, 2005, for Determination of Water Right No. 746-BD, and subject to the following terms and conditions of this replacement plan.
17. The allowed annual amount of ground water to be withdrawn from the aquifer by each of the proposed thirty-eight wells permitted pursuant to the replacement plan shall not exceed 0.47 acre-feet, based on a total combined annual withdrawal of 18 acre-feet.
18. The use of each of the wells would be limited to an annual withdrawal of 0.47 acre-feet of ground water to be used for household use, the irrigation of up to 2,000 square feet of lawn garden area, and the watering of four (4) domestic animals. The wells may also be used for commercial use for an in-home business operation provided that the annual withdrawal does not exceed 0.47 acre-feet and that use fully supports the prescribed method of replacement of depletions.

19. 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 or the Upper Black Squirrel Creek Ground Water Management District upon request.
20. Net annual depletions to the affected alluvial aquifer, in acre-feet, are attached hereto as Exhibit A. Depletions are based on an annual withdrawal from the aquifer of 18 acre-feet. These calculated depletions are given in five-year increments and shall be used for that increment year and the preceding four years. For example, the first year requiring replacement water will be the first year of use of the replacement plan, in the amount of 0.469 acre-feet based on the 5th year depletion amount.
21. Year of first use of this replacement plan shall coincide with the calendar year of construction of a well permitted pursuant to this plan or permitting of an existing well pursuant to the plan. The amount of replacement water required for each subsequent calendar year shall be the amount of net depletions for the previous calendar year, as indicated in Exhibit A.
22. The replacement water return flows must occur over a saturated alluvium or a continuous shallow water table in hydraulic connection with the alluvial aquifer of Upper Black Squirrel Creek or its tributaries and must occur at the required time, location and amount. The Commission may request adequate proof that the return flows occur as required.
23. Return flows from in-house use of ground water within the future thirty-eight (38) lot subdivision shall occur through individual on lot non-evaporative septic systems located within the above described 119.34 acre area; to prevent unreasonable impairment of water quality, the required septic systems shall be constructed to State and county health department standards.
24. The required annual amount of replacement water, as indicated in Exhibit A, shall provide for the depletion of alluvial water for the first 100 years due to all-previous pumping, and is required even if pumping from the aquifer ceases within the first 100 years of first use of this replacement plan. If pumping continues beyond 100 years, the amount of replacement water shall replace actual impact until pumping ceases.
25. 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.
26. The property owners association (or the "applicant or their successors") shall assure that replacement water is provided to the alluvium reasonably coincident with the depletions to the alluvium allowed under the plan. The amount of replacement water shall be calculated and reported on the "Accounting Form", included herein as Exhibit B. The replacement water 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 months.

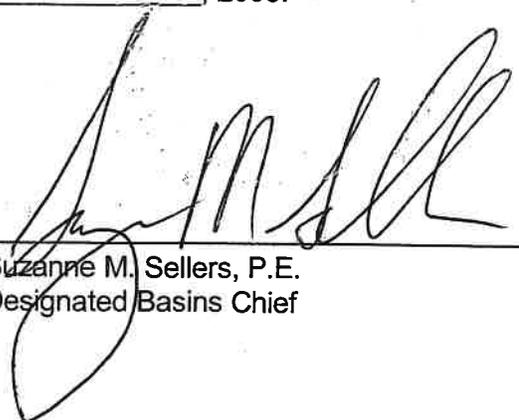
27. The property owners association (or the "applicant or their successors") shall record and maintain permanent records of all totalizing flow meter readings, power meter readings and data concerning all other operations associated with the replacement plan which are necessary to allow replacement to occur on a yearly and to submit this information to the Commission and the Upper Black Squirrel Creek Ground Water Management District on an annual basis for the calendar year just concluding by February 15th of the following year.
28. To facilitate 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 staff recommends that the applicant transfer a 1/38 share of the water right and annual allocation amount to each lot owner (0.47 acre-feet per lot). Such transfers shall be by recorded deed, in accordance with the conditions of paragraph 23 of the Commission's Order for Determination No. 746-BD.
29. 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.
30. 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 119.34 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.
31. 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.
32. 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 2nd day of August, 2005.



Hal D. Simpson
Executive Director
Colorado Ground Water Commission

By:



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

BLACK SQUIRREL

TIME (years)	TIME STEP LENGTH (years)	q/Q (%)	vol. this time step (af)	ac-ft/yr
5	5	2.607	2.347	0.469
10	5	5.075	4.568	0.914
15	5	7.398	6.658	1.332
20	5	9.571	8.614	1.723
25	5	11.603	10.443	2.089
30	5	13.491	12.142	2.428
35	5	15.246	13.721	2.744
40	5	16.872	15.185	3.037
45	5	18.381	16.543	3.309
50	5	19.778	17.800	3.560
55	5	21.066	18.959	3.792
60	5	22.261	20.035	4.007
65	5	23.368	21.031	4.206
70	5	24.390	21.951	4.390
75	5	25.340	22.806	4.561
80	5	26.218	23.596	4.719
85	5	27.035	24.331	4.866
90	5	27.791	25.012	5.002
95	5	28.496	25.646	5.129
100	5	29.152	26.236	5.247
105	5	29.763	26.787	5.357
110	5	30.335	27.301	5.460
115	5	30.866	27.780	5.556
120	5	31.365	28.229	5.646
125	5	31.832	28.649	5.730
130	5	32.271	29.044	5.809
135	5	32.685	29.417	5.883
140	5	33.072	29.765	5.953
145	5	33.438	30.094	6.019
150	5	33.780	30.402	6.080
155	5	34.106	30.696	6.139
160	5	34.412	30.971	6.194
165	5	34.706	31.235	6.247
170	5	34.979	31.482	6.296
175	5	35.241	31.717	6.343
180	5	35.491	31.942	6.388
185	5	35.728	32.155	6.431
190	5	35.953	32.358	6.472
195	5	36.171	32.554	6.511
200	5	36.376	32.739	6.548
205	5	36.569	32.912	6.582
210	5	36.758	33.083	6.617
215	5	36.936	33.242	6.648
220	5	37.109	33.398	6.680
225	5	37.274	33.546	6.709
230	5	37.431	33.688	6.738
235	5	37.579	33.822	6.764
240	5	37.728	33.956	6.791
245	5	37.865	34.079	6.816
250	5	38.002	34.202	6.840
255	5	38.131	34.318	6.864
260	5	38.256	34.430	6.886
265	5	38.372	34.535	6.907
270	5	38.489	34.640	6.928
275	5	38.602	34.742	6.948
280	5	38.710	34.839	6.968
285	5	38.811	34.930	6.986
290	5	38.912	35.021	7.004
295	5	39.008	35.108	7.022
300	5	39.105	35.194	7.039
305	5	36.585	32.927	6.585
310	5	34.199	30.779	6.156
315	5	31.957	28.761	5.752
320	5	29.856	26.870	5.374
325	5	27.900	25.110	5.022

EXHIBIT A

DRAFT

			From	To	Example
			2302	2303	
	Net Depletion From Last Year [3]	+	0	af	
	Alluvial Depletion from Table I rounded up to nearest 5 years since pumping began				
		+	7.03	af	
1	Total Depletion	=	7.03	af	
	Total No. of Homes This Year	+	38		
		*	0.24	af	
2	Return Flows In West Fork	=	9.12	af	
3	Accretion (Depletion) [If < 0 enter 0]	(1)-(2)	0	af	

EXHIBIT B

ORDER OF THE GROUND WATER COMMISSION

IN THE MATTER OF DETERMINATION OF WATER RIGHT NUMBER: **472-BD**

AQUIFER: DAWSON

APPLICANTS: JERRY R. LANDRESS

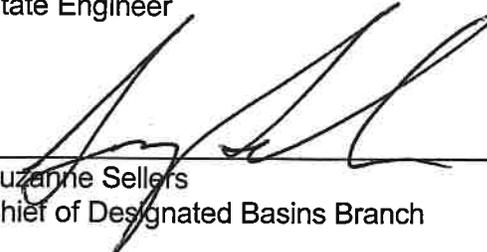
THE GROUND WATER COMMISSION FINDS:

1. The determination of water right with Determination No. 472-BD was approved by the Colorado Ground Water Commission on April 22, 2004.
2. On December 17, 2004, Jerry R. Landress submitted a signed and dated Cancellation of a Determination of Water Rights form.
3. As a result the determination of water right with Determination No. 472-BD is hereby cancelled and is of no further force or effect.

Dated this 4th day of August, 2005.



Hal D. Simpson
State Engineer

By: 

Suzanne Sellers
Chief of Designated Basins Branch

Prepared by: ebt

Appendix D

Eagleview Subdivision - Water Quality Results - Dawson Aquifer

Compound	Result	Detection Limit	MCL
Bicarbonate (mg/L as CaCO3)	97.2	0.2	
Calcium (mg/L as CaCO3)	114.8	0.1	
Carbonate (mg/L as CaCO3)	ND	0.2	
Hydroxide (mg/L as CaCO3)	ND	0.2	
Langelier Index	-1.00		
pH	6.91	0.01	6.5 - 8.5
Temperature °C	14	1	
Total Alkalinity (mg/L as CaCO3)	97.2	4.0	
Total Dissolved Solids (mg/L)	294	5	500
Nitrate as N (mg/L)	1.81	0.05	10
Nitrite as N (mg/L)	ND	0.03	1
<i>Total (mg/L)</i>			
Cyanide	ND	0.005	0.02
Iron	0.007	0.005	0.3
Sodium	9.6	0.1	
Aluminum	0.001	0.001	0.05
Antimony	ND	0.001	0.006
Arsenic	0.001	0.001	0.01
Barium	0.063	0.001	2
Beryllium	ND	0.001	0.004
Cadmium	ND	0.001	0.005
Chromium	0.002	0.001	0.1
Fluoride	0.19	0.1	4
Manganese	0.0111	0.0008	0.05
Mercury	ND	0.0001	0.002
Nickel	0.004	0.001	
Selenium	0.004	0.001	0.05
Silver	ND	0.0005	0.1
Sulfate	47.2	0.1	
Thallium	ND	0.001	0.002
Zinc	0.035	0.001	5
Gross Alpha (pCi/L)	7.2	0.1	15
Gross Beta (pCi/L)	7.8	3.8	4 mrem/yr
Radium -226 (pCi/L)	1	0.1	
Radium - 228 (pCi/L)	2.5	0.3	
Combined Radium 226 + 228	3.5		5
Total Coliform/E. Coli	Absent/Absent	1	Absent/Absent

Analytical Results

TASK NO: 211028040

Report To: Doug Schwenke

Company: JDS Hydro Consultants
5540 Tech Center Dr.
Suite 100
Colorado Springs CO 80919

Bill To: Doug Schwenke

Company: JDS Hydro Consultants
5540 Tech Center Dr.
Suite 100
Colorado Springs CO 80919

Task No.: 211028040
Client PO:
Client Project: Eagleview Subdivision

Date Received: 10/28/21
Date Reported: 12/1/21
Matrix: Water - Drinking

Lab Number	Customer Sample ID	Sample Date/Time	Test	Result	Method	Date Analyzed
211028040-01A	Eagleview Subdivision #1-6	10/27/21 1:15 PM	Total Coliform	Absent	SM 9223	10/29/21
			E-Coli	Absent	SM 9223	10/29/21

Abbreviations/ References:

Absent = Coliform Not Detected

Present = Coliform Detected - Chlorination Recommended

Date Analyzed = Date Test Completed

SM = "Standard Methods for the Examination of Water and Wastewater"; APHA; 19th Edition; 1995



DATA APPROVED FOR RELEASE BY

Chain of Custody Form



Commerce City Lab
10411 Heinz Way
Commerce City CO 800640

Lakewood Service Center
12860 W. Cedar Dr, Suite 100A
Lakewood CO 80228

Phone: 303-659-2313

www.coloradolab.com

REV NIST 11-15

Report To Information Company Name: <u>IDS-Hydr</u> Contact Name: <u>Deug Schwenke</u> Address: <u>5540 TechCenter Drive</u> City: <u>Ida Springs State CO</u> zip: <u>80419</u> Phone: <u>719-327-0073</u> Email: <u>d.schwenke@idshydro.com</u>		Bill To Information (if different from report to) Company Name: _____ Contact Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ Email: _____ PO No.: _____		Project Name/Number <u>Escherichia</u> <u>Subd Watson</u> Task Number (Lab Use Only) CAL Task 211028040 JML	
--	--	--	--	--	--

Sample Matrix (Select One Only)			Sample ID	No. of Containers	Grab or (Check One Only) Composite	Tests Requested										
Waste Water <input type="checkbox"/>	Ground Water <input checked="" type="checkbox"/>	Surface Water <input type="checkbox"/>				Soil <input type="checkbox"/>	Sludge <input type="checkbox"/>	Drinking Water <input type="checkbox"/>	nitrate	nitrite	TDS	inorganics (see list)	Rad 226	Rad 228	Gross Alpha	Gross Beta
			#1	2	X											
			#2	1	X				X							
			#3	1	X											
			#4	3	X						X	X				
			#5	1	X							X	X			
			#6	1	X										X	

Instructions: all compounds Field pH: 6.91 C/S Initial: _____
tested on enclosed label doc A: 13.0 Temp: 13.0 C/S Charge: X
 Date/Time: _____ Deliver Via: _____
 Signature: Murphy 10/08/01 MWD
 Seals Present Yes No
 Temp. 4 %/Cice Y Sample Pres. Yes No

EPC Confined Aquifer Sampling Requirements

Field Measurements

pH

Temp

Radionuclides

Radium 226 and Radium 228

Gross alpha/Beta

Inorganics

Antimony

Arsenic

Barium

Beryllium

Cadmium

Chromium

Cyanide (Total)

Fluoride

Mercury

Nitrate

Nitrite

Selenium

Thallium

Secondary MCLs

Aluminum

Chloride

Corrosivity

Iron

Manganese

Silver

Sulfate

Zinc

TDS

Bacteriological:

Total Coliform

Report To: Doug Schwenke
Company: JDS Hydro Consultants
 5540 Tech Center Dr.
 Suite 100
 Colorado Springs CO 80919

Bill To: Doug Schwenke
Company: JDS Hydro Consultants
 5540 Tech Center Dr.
 Suite 100
 Colorado Springs CO 80919

Task No.: 211028040
Client PO:
Client Project: Eagleview Subdivision

Date Received: 10/28/21
Date Reported: 12/1/21
Matrix: Water - Drinking

Customer Sample ID Eagleview Subdivision #1-6

Sample Date/Time: 10/27/21 1:15 PM

Lab Number: 211028040-01

Test	Result	Method	RL	Date Analyzed	QC Batch ID	Analyzed By
Bicarbonate	97.2 mg/L as CaCO ₃	SM 2320-B	0.2 mg/L as CaCO ₃	10/29/21	-	TAB
Calcium as CaCO ₃	114.8 mg/L	EPA 200.7	0.1 mg/L	11/3/21	-	MBN
Carbonate	ND	SM 2320-B	0.2 mg/L as CaCO ₃	10/29/21	-	TAB
Hydroxide	ND	SM 2320-B	0.2 mg/L as CaCO ₃	10/29/21	-	TAB
Langelier Index	-1.00 units	SM 2330-B	units	11/9/21	-	SAN
pH	6.91 units	SM 4500-H-B	0.01 units	10/27/21	-	Sampler
Temperature	14 °C	SM 4500-H-B	1 °C	10/27/21	-	Sampler
Total Alkalinity	97.2 mg/L as CaCO ₃	SM 2320-B	4.0 mg/L as CaCO ₃	10/29/21	QC53038	TAB
Total Dissolved Solids	294 mg/L	SM 2540-C	5 mg/L	11/2/21	QC53118	TAB

Abbreviations/ References:

RL = Reporting Limit = Minimum Level
 mg/L = Milligrams Per Liter or PPM
 ug/L = Micrograms Per Liter or PPB
 mpn/100 mls = Most Probable Number Index/ 100 mls
 Date Analyzed = Date Test Completed

(d) RPD acceptable due to low duplicate and sample concentrations.
 (s) Spike amount low relative to the sample amount.
 ND = Not Detected at Reporting Limit.

Analytical QC Summary

TASK NO: 211028040

Report To: Doug Schwenke
Company: JDS Hydro Consultants

Receive Date: 10/28/21
Project Name: Eagleview Subdivision

Test	QC Batch ID	QC Type	Result	Method		
Total Alkalinity	QC53038	Blank	ND	SM 2320-B		
Total Dissolved Solids	QC53118	Blank	ND	SM 2540-C		

Test	QC Batch ID	QC Type	Limits	% Rec	RPD	Method
Total Alkalinity	QC53038	Duplicate	0 - 20	-	0.0	SM 2320-B
		LCS	90 - 110	99.4	-	
Total Dissolved Solids	QC53118	Duplicate	0 - 20	-	6.7	SM 2540-C
		LCS	85 - 115	99.9	-	

All analyses were performed in accordance with approved methods under the latest revision to 40 CFR Part 136 unless otherwise identified. Based on my inquiry of the person or persons directly responsible for analyzing the wastewater samples and generating the report (s), the analyses, report, and information submitted are, to the best of my knowledge and belief, true, accurate, and complete.



DATA APPROVED FOR RELEASE BY

Abbreviations/ References:
 RL = Reporting Limit = Minimum Level
 mg/L = Milligrams Per Liter or PPM
 ug/L = Micrograms Per Liter or PPB
 mpn/100 mls = Most Probable Number Index/ 100 mls
 Date Analyzed = Date Test Completed

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Chain of Custody Form



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Phone: 303-659-2313

www.coloradolab.com

REV NIST 11-15

Report To Information Company Name: <u>IDS-Hydro</u> Contact Name: <u>Deug Schwenke</u> Address: <u>5540 TechCenter Drive</u> City: <u>Idaho Springs</u> State: <u>CO</u> Zip: <u>80419</u> Phone: <u>719-227-0073</u> Email: <u>d.schwenke@idshydro.com</u>		Bill To Information (if different from report to) Company Name: _____ Contact Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ Email: _____ PO No.: _____		Project Name/Number <u>Escaletion</u> <u>Substation</u> Task Number (Lab Use Only) <u>CAL Task</u> <u>211028040</u> <u>JML</u>	
---	--	--	--	---	--

Sample Matrix (Select One Only)			Sample ID	No. of Containers	Grab or (Check One Only) Composite	Tests Requested										
Waste Water <input type="checkbox"/>	Ground Water <input checked="" type="checkbox"/>	Surface Water <input type="checkbox"/>				Soil <input type="checkbox"/>	Sludge <input type="checkbox"/>	Drinking Water <input type="checkbox"/>	nitrate	nitrite	TDS	inorganics (see list)	Rad 226	Rad 228	Gross Alpha	Gross Beta
			#1	2	X											
			#2	1	X				X							
			#3	1	X									X		
			#4	3	X						X	X				
			#5	1	X							X	X			
			#6	1	X										X	

Instructions: all compounds Field pH: 6.91 C/S Initial: _____
tested on enclosed label doc A: 13.0 Temp: 13.0
 Date/Time: _____
 Delivered Via: _____
 C/S Charge: X Temp. 4 %/C/c: _____
 Seals Present Yes No
 Sample Pres. Yes No

EPC Confined Aquifer Sampling Requirements

Field Measurements

pH

Temp

Radionuclides

Radium 226 and Radium 228

Gross alpha/Beta

Inorganics

Antimony

Arsenic

Barium

Beryllium

Cadmium

Chromium

Cyanide (Total)

Fluoride

Mercury

Nitrate

Nitrite

Selenium

Thallium

Secondary MCLs

Aluminum

Chloride

Corrosivity

Iron

Manganese

Silver

Sulfate

Zinc

TDS

Bacteriological:

Total Coliform

Report To: Doug Schwenke
Company: JDS Hydro Consultants
5540 Tech Center Dr.
Suite 100
Colorado Springs CO 80919

Bill To: Doug Schwenke
Company: JDS Hydro Consultants
5540 Tech Center Dr.
Suite 100
Colorado Springs CO 80919

Task No.: 211028040
Client PO:
Client Project: Eagleview Subdivision

Date Received: 10/28/21
Date Reported: 12/1/21
Matrix: Water - Drinking

Customer Sample ID Eagleview Subdivision #1-6
Sample Date/Time: 10/27/21 1:15 PM
Lab Number: 211028040-01

Test	Result	Method	RL	MCL	Date Analyzed	QC Batch ID	Analyzed By
Chloride	8.6 mg/L	EPA 300.0	0.1 mg/L		10/29/21	QC53091	MLT
Fluoride	0.19 mg/L	EPA 300.0	0.10 mg/L	4	10/29/21	QC53092	MLT
Nitrate Nitrogen	1.81 mg/L	EPA 300.0	0.05 mg/L	10	10/29/21	QC53130	MLT
Nitrite Nitrogen	ND	EPA 300.0	0.03 mg/L	1	10/29/21	QC53131	MLT
Sulfate	47.2 mg/L	EPA 300.0	0.1 mg/L		10/29/21	QC53093	MLT
Cyanide-Total	ND	EPA 335.4	0.005 mg/L	0.02	11/2/21	QC53070	ECM
Total							
Iron	0.007 mg/L	EPA 200.7	0.005 mg/L	0.3	11/3/21	QC53105	MBN
Sodium	9.6 mg/L	EPA 200.7	0.1 mg/L	N/A	11/3/21	-	MAT
Aluminum	0.001 mg/L	EPA 200.8	0.001 mg/L	0.05	11/4/21	QC53159	MBN
Antimony	ND	EPA 200.8	0.001 mg/L	0.006	11/4/21	QC53140	MBN
Arsenic	0.001 mg/L	EPA 200.8	0.001 mg/L	0.01	11/4/21	QC53140	MBN
Barium	0.063 mg/L	EPA 200.8	0.001 mg/L	2	11/4/21	QC53140	MBN
Beryllium	ND	EPA 200.8	0.001 mg/L	0.004	11/4/21	QC53140	MBN
Cadmium	ND	EPA 200.8	0.001 mg/L	0.005	11/4/21	QC53140	MBN
Chromium	0.002 mg/L	EPA 200.8	0.001 mg/L	0.1	11/4/21	QC53140	MBN
Manganese	0.0111 mg/L	EPA 200.8	0.0008 mg/L	0.05	11/4/21	QC53159	MBN
Mercury	ND	EPA 200.8	0.0001 mg/L	0.002	11/4/21	QC53140	MBN
Nickel	0.004 mg/L	EPA 200.8	0.001 mg/L	N/A	11/4/21	QC53140	MBN
Selenium	0.004 mg/L	EPA 200.8	0.001 mg/L	0.05	11/4/21	QC53140	MBN
Silver	ND	EPA 200.8	0.0005 mg/L	0.1	11/4/21	QC53159	MBN

Abbreviations/ References:

RL = Reporting Limit = Minimum Level
mg/L = Milligrams Per Liter or PPM
ug/L = Micrograms Per Liter or PPB
mpn/100 mls = Most Probable Number Index/ 100 mls
Date Analyzed = Date Test Completed

(d) RPD acceptable due to low duplicate and sample concentrations.
(s) Spike amount low relative to the sample amount.
ND = Not Detected at Reporting Limit.

Report To: Doug Schwenke
Company: JDS Hydro Consultants
5540 Tech Center Dr.
Suite 100
Colorado Springs CO 80919

Bill To: Doug Schwenke
Company: JDS Hydro Consultants
5540 Tech Center Dr.
Suite 100
Colorado Springs CO 80919

<p>Task No.: 211028040 Client PO: Client Project: Eagleview Subdivision</p>	<p>Date Received: 10/28/21 Date Reported: 12/1/21 Matrix: Water - Drinking</p>
--	---

Customer Sample ID Eagleview Subdivision #1-6

Sample Date/Time: 10/27/21 1:15 PM

Lab Number: 211028040-01

Test	Result	Method	RL	MCL	Date Analyzed	QC Batch ID	Analyzed By
<i>Total</i>							
Thallium	ND	EPA 200.8	0.001 mg/L	0.002	11/4/21	QC53140	MBN
Zinc	0.035 mg/L	EPA 200.8	0.001 mg/L	5	11/4/21	QC53159	MBN

Abbreviations/ References:

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mg/L = Milligrams Per Liter or PPM
ug/L = Micrograms Per Liter or PPB
mpn/100 mls = Most Probable Number Index/ 100 mls
Date Analyzed = Date Test Completed

(d) RPD acceptable due to low duplicate and sample concentrations.
(s) Spike amount low relative to the sample amount.
ND = Not Detected at Reporting Limit.

Report To: Doug Schwenke
Company: JDS Hydro Consultants

Receive Date: 10/28/21
Project Name: Eagleview Subdivision

Test	QC Batch ID	QC Type	Result	Method
Chloride	QC53091	Blank	ND	EPA 300.0
Cyanide-Total	QC53070	Blank	ND	EPA 335.4
Fluoride	QC53092	Blank	ND	EPA 300.0
Antimony	QC53140	Method Blank	ND	EPA 200.8
Arsenic	QC53140	Method Blank	ND	EPA 200.8
Barium	QC53140	Method Blank	ND	EPA 200.8
Beryllium	QC53140	Method Blank	ND	EPA 200.8
Cadmium	QC53140	Method Blank	ND	EPA 200.8
Chromium	QC53140	Method Blank	ND	EPA 200.8
Mercury	QC53140	Method Blank	ND	EPA 200.8
Nickel	QC53140	Method Blank	ND	EPA 200.8
Selenium	QC53140	Method Blank	ND	EPA 200.8
Thallium	QC53140	Method Blank	ND	EPA 200.8
Aluminum	QC53159	Method Blank	ND	EPA 200.8
Manganese	QC53159	Method Blank	ND	EPA 200.8
Silver	QC53159	Method Blank	ND	EPA 200.8
Zinc	QC53159	Method Blank	ND	EPA 200.8
Iron	QC53105	Method Blank	ND	EPA 200.7
Nitrate Nitrogen	QC53130	Blank	ND	EPA 300.0
Nitrite Nitrogen	QC53131	Blank	ND	EPA 300.0
Sulfate	QC53093	Blank	ND	EPA 300.0

Test	QC Batch ID	QC Type	Limits	% Rec	RPD	Method
Chloride	QC53091	Duplicate	0 - 20	-	0.3	EPA 300.0
		LCS	90 - 110	100.6	-	
		MS	75 - 125	105.3	-	
Cyanide-Total	QC53070	Duplicate	0 - 20	-	0.0	EPA 335.4
		LCS	90 - 110	101.1	-	
		MS	75 - 125	103.5	-	
Fluoride	QC53092	Duplicate	0 - 20	-	0.2	EPA 300.0
		LCS	90 - 110	92.2	-	
		MS	75 - 125	92.7	-	
Antimony	QC53140	LCS	90 - 110	103.1	-	EPA 200.8
		MS	70 - 130	103.6	-	
		MSD	0 - 10	-	3.4	
Arsenic	QC53140	LCS	90 - 110	97.0	-	EPA 200.8
		MS	70 - 130	122.5	-	
		MSD	0 - 10	-	0.3	
Barium	QC53140	LCS	90 - 110	101.3	-	EPA 200.8
		MS	70 - 130	91.8	-	
		MSD	0 - 10	-	1.3	

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 Date Analyzed = Date Test Completed

(d) RPD acceptable due to low duplicate and sample concentrations.
 (s) Spike amount low relative to the sample amount.
 ND = Not Detected at Reporting Limit.

Test	QC Batch ID	QC Type	Limits	% Rec	RPD	Method
Beryllium	QC53140	LCS	90 - 110	103.8	-	EPA 200.8
		MS	70 - 130	104.3	-	
		MSD	0 - 10	-	4.7	
Cadmium	QC53140	LCS	90 - 110	106.9	-	EPA 200.8
		MS	70 - 130	109.9	-	
		MSD	0 - 10	-	4.5	
Chromium	QC53140	LCS	90 - 110	93.2	-	EPA 200.8
		MS	70 - 130	86.1	-	
		MSD	0 - 10	-	1.7	
Mercury	QC53140	LCS	90 - 110	106.6	-	EPA 200.8
		MS	70 - 130	96.9	-	
		MSD	0 - 10	-	8.2	
Nickel	QC53140	LCS	90 - 110	100.7	-	EPA 200.8
		MS	70 - 130	103.2	-	
		MSD	0 - 10	-	0.6	
Selenium	QC53140	LCS	90 - 110	103.8	-	EPA 200.8
		MS	70 - 130	127.0	-	
		MSD	0 - 10	-	3.0	
Thallium	QC53140	LCS	90 - 110	102.9	-	EPA 200.8
		MS	70 - 130	86.5	-	
		MSD	0 - 10	-	0.1	
Aluminum	QC53159	LCS	90 - 110	103.6	-	EPA 200.8
		MS	70 - 130	111.2	-	
		MSD	0 - 10	-	0.0	
Manganese	QC53159	LCS	90 - 110	95.5	-	EPA 200.8
		MS	70 - 130	94.1	-	
		MSD	0 - 10	-	2.5	
Silver	QC53159	LCS	90 - 110	97.6	-	EPA 200.8
		MS	70 - 130	71.9	-	
		MSD	0 - 10	-	0.2	
Zinc	QC53159	LCS	90 - 110	102.3	-	EPA 200.8
		MS	70 - 130	99.9	-	
		MSD	0 - 10	-	2.3	
Iron	QC53105	Duplicate	0 - 20	-	0.0	EPA 200.7
		LCS	90 - 110	97.4	-	
		MS	75 - 125	91.8	-	
Nitrate Nitrogen	QC53130	Duplicate	0 - 20	-	0.5	EPA 300.0
		LCS	90 - 110	97.5	-	
		MS	75 - 125	94.1	-	
Nitrite Nitrogen	QC53131	Duplicate	0 - 20	-	0.0	EPA 300.0
		LCS	90 - 110	108.8	-	
		MS	75 - 125	97.4	-	
Sulfate	QC53093	Duplicate	0 - 20	-	0.1	EPA 300.0
		LCS	90 - 110	100.0	-	
		MS	75 - 125	104.6	-	

All analyses were performed in accordance with approved methods under the latest revision to 40 CFR Part 136 unless otherwise identified. Based on my inquiry of the person or persons directly responsible for analyzing the wastewater samples and generating the report (s), the analyses, report, and information submitted are, to the best of my knowledge and belief, true, accurate, and complete.

Abbreviations/ References:

RL = Reporting Limit = Minimum Level
mg/L = Milligrams Per Liter or PPM
ug/L = Micrograms Per Liter or PPB
mpn/100 mls = Most Probable Number Index/ 100 mls
Date Analyzed = Date Test Completed

(d) RPD acceptable due to low duplicate and sample concentrations.
(s) Spike amount low relative to the sample amount.
ND = Not Detected at Reporting Limit.



DATA APPROVED FOR RELEASE BY

Abbreviations/ References:

*RL = Reporting Limit = Minimum Level
mg/L = Milligrams Per Liter or PPM
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Date Analyzed = Date Test Completed*

*(d) RPD acceptable due to low duplicate and sample concentrations.
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Chain of Custody Form



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Lakewood Service Center
12860 W. Cedar Dr, Suite 100A
Lakewood CO 80228

Phone: 303-659-2313

www.coloradolab.com

REV NIST 11-11

Report To Information		Bill To Information (if different from report to)		Project Name/Number	
Company Name: <u>IDS-Hydr</u>		Company Name: _____		<u>Escherichia</u>	
Contact Name: <u>Deug Schwenke</u>		Contact Name: _____		<u>Substation</u>	
Address: <u>5540 TechCenter Drive</u>		Address: _____		Task Number (Lab Use Only)	
City: <u>Idospps State CO</u> zip: <u>80919</u>		City: _____ State: _____ Zip: _____		<u>CAL Task</u>	
Phone: <u>719-227-0073</u>		Phone: _____		<u>211028040</u>	
Email: <u>d.schwenke@idshydro.com</u>		Email: _____		<u>JML</u>	
Sample Collector: <u>Stephanie Schwenke</u>		PO No.: _____			
Sample Collector Phone: <u>719-321-5341</u>					

Sample Matrix (Select One Only)			Sample ID	No. of Containers	Grab or (Check One Only) Composite	Tests Requested										
Waste Water <input type="checkbox"/>	Ground Water <input checked="" type="checkbox"/>	Surface Water <input type="checkbox"/>				Soil <input type="checkbox"/>	Sludge <input type="checkbox"/>	Drinking Water <input type="checkbox"/>	nitrate	nitrite	TDS	inorganics (see list)	Rad 226	Rad 228	Gross Alpha	Gross Beta
Date	Time															
10/21/11	1:05pm		#1	2	X											
	1:11pm		#2	1	X				X							
	1:10pm		#3	1	X									X		
	1:12pm		#4	3	X							X				
	1:13pm		#5	1	X							X				
	1:15pm		#6	1	X										X	

Instructions: all compounds Field pH: 6.91 C/S Initial: _____

tested on enclosed label doc A: 13.0 Temp: 13.0 Fedly X

Seals Present Yes No

Temp. 4 %/Cice Y Sample Pres. Yes No

Signature: [Handwritten Signature] Date: 10/21/11

EPC Confined Aquifer Sampling Requirements

Field Measurements

pH

Temp

Radionuclides

Radium 226 and Radium 228

Gross alpha/Beta

Inorganics

Antimony

Arsenic

Barium

Beryllium

Cadmium

Chromium

Cyanide (Total)

Fluoride

Mercury

Nitrate

Nitrite

Selenium

Thallium

Secondary MCLs

Aluminum

Chloride

Corrosivity

Iron

Manganese

Silver

Sulfate

Zinc

TDS

Bacteriological:

Total Coliform



Hazen Research, Inc.
4601 Indiana Street
Golden, CO 80403 USA
Tel: (303) 279-4501
Fax: (303) 278-1528

Lab Control ID: 21M03303

Received: Oct 29, 2021

Reported: Dec 01, 2021

Purchase Order No.

None Received

Customer ID: 20040H

Account ID: Z01034

Stuart Nielson
Colorado Analytical Laboratories, Inc.
10411 Heinz Way
Commerce City, CO 80640

ANALYTICAL REPORT

*Report may only be copied in its entirety.
Results reported herein relate only to discrete samples
submitted by the client. Hazen Research, Inc. does not warrant
that the results are representative of anything other than the
samples that were received in the laboratory*

By: 

Jessica Axen
Analytical Laboratories Director

Customer ID: 20040H
 Account ID: Z01034

ANALYTICAL REPORT

Stuart Nielson
 Colorado Analytical Laboratories, Inc.

Lab Sample ID			21M03303-001					
Customer Sample ID			211028040-01D - Eagleview Subdivision #1-6 sampled on 10/28/21 @ 1315					
Parameter	Units	Code	Result	Precision* +/-	Detection Limit	Method	Analysis Date / Time	Analyst
Gross Alpha	pCi/L	T	7.2	3.1	0.1	SM 7110 B	11/3/21 @ 0851	RG
Gross Beta	pCi/L	T	7.8	2.7	3.8	SM 7110 B	11/3/21 @ 0851	RG
Radium-226	pCi/L	T	NR	-	-	SM 7500-Ra B	-	-
Radium-228	pCi/L	T	NR	-	-	EPA Ra-05	-	-

Certification ID's: CO/EPA CO00008

*Variability of the radioactive decay process (counting error) at the 95% confidence level, 1.96 sigma.

Codes: (T) = Total (D) = Dissolved (S) = Suspended (R) = Total Residual (AR) = As Received < = Less Than

Customer ID: 20040H
 Account ID: Z01034

ANALYTICAL REPORT

Stuart Nielson
 Colorado Analytical Laboratories, Inc.

Lab Sample ID			21M03303-002					
Customer Sample ID			211028040-01E - Eagleview Subdivision #1-6 sampled on 10/28/21 @ 1315					
Parameter	Units	Code	Result	Precision* +/-	Detection Limit	Method	Analysis Date / Time	Analyst
Gross Alpha	pCi/L	T	NR	-	-	SM 7110 B	-	-
Gross Beta	pCi/L	T	NR	-	-	SM 7110 B	-	-
Radium-226	pCi/L	T	1.0	0.3	0.1	SM 7500-Ra B	11/11/21 @ 1450	KT
Radium-228	pCi/L	T	2.5	0.9	0.3	EPA Ra-05	11/19/21 @ 1053	JR

Certification ID's: CO/EPA CO00008

*Variability of the radioactive decay process (counting error) at the 95% confidence level, 1.96 sigma.

Codes: (T) = Total (D) = Dissolved (S) = Suspended (R) = Total Residual (AR) = As Received < = Less Than

Batch QC Summary Form

Analyte: Gross Alpha

Control Standard/LFB: ID: C-11 pCi/mL: 57.4 (use 1 diluted)

Spike Solution: ID: C-11 pCi/mL: 57.4 (use 1 mL)

Spike Recovery Calculation: Sample: Tap*

$$\text{Calculation: } \frac{(46.5) - (1.000) - (0.200)}{57.4} \times 100 = 81\%$$

Batch QC Evaluation:

Parameter	Criteria	Pass	Fail	N/A
Control Std./LFB	+/- 30 %	x		
Spike Recovery	70 - 130 %	x		
Blank	< or = 3 x Uncertainty	x		
Duplicate 1	95% confidence interval overlap	x		
Duplicate 2 *	95% confidence interval overlap			x

* Required for batch size greater than 10 samples.

Conclusions:

 x Batch QC Passes**
 Batch QC Fails
 Batch QC Passes, with exceptions**:

Reruns Required: _____

Narrative:

**All QC data provided in this section of the report met the acceptance criteria specified in the analytical methods and procedures. State Maximum Contamination Levels (MCLs) are not evaluated in this report.

Batch Listing by Lab Control Number:

21M03303 _____
21M03331 _____
21M03333 _____
21M03304 _____
21M03311 _____

Evaluator:

Rosanne Sullivan _____

11/04/2021

Date

Batch QC Summary Form

Analyte: Gross Beta

Control Standard/LFB: ID: C-11 pCi/mL: 44 (use 1 diluted)

Spike Solution: ID: C-11 pCi/mL: 44 (use 1 mL)

Spike Recovery Calculation: Sample: Tap*

Calculation:
$$\frac{(42.4) (1.000) - (0.0) (0.200)}{44} \times 100 = 96\%$$

Batch QC Evaluation:

Parameter	Criteria	Pass	Fail	N/A
Control Std./LFB	+/- 20 %	x		
Spike Recovery	80 - 120 %	x		
Blank	< or = 3 x Uncertainty	x		
Duplicate 1	95% confidence interval overlap	x		
Duplicate 2 *	95% confidence interval overlap			x

* Required for batch size greater than 10 samples.

Conclusions:

 x Batch QC Passes**
 Batch QC Fails
 Batch QC Passes, with exceptions**:

Reruns Required: _____

Narrative:

**All QC data provided in this section of the report met the acceptance criteria specified in the analytical methods and procedures. State Maximum Contamination Levels (MCLs) are not evaluated in this report.

Batch Listing by Lab Control Number:

21M03303 _____
21M03331 _____
21M03333 _____
21M03304 _____
21M03311 _____

Evaluator:
 _____

11/04/2021

 Date

Batch QC Summary Form

Analyte: Radium-226

Control Standard/LFB: ID: NBL-6A pCi/mL: 23 (use 2 diluted)

Spike Solution: ID: NBL-6A pCi/mL: 23 (use 2 mL)

Spike Recovery Calculation: Sample: 21M03292

$$\text{Calculation: } \frac{(43.7) - (0.980)}{46} - \frac{(2.7) - (0.980)}{46} \times 100 = 87\%$$

Batch QC Evaluation:

Parameter	Criteria	Pass	Fail	N/A
Control Std./LFB	+/- 20 %	x		
Spike Recovery	80 - 120 %	x		
Blank	< or = 3 x Uncertainty	x		
Duplicate 1	95% confidence interval overlap	x		
Duplicate 2 *	95% confidence interval overlap			x

* Required for batch size greater than 10 samples.

Conclusions:

 x Batch QC Passes**
 Batch QC Fails
 Batch QC Passes, with exceptions**:

Reruns Required: _____

Narrative:

**All QC data provided in this section of the report met the acceptance criteria specified in the analytical methods and procedures. State Maximum Contamination Levels (MCLs) are not evaluated in this report.

Batch Listing by Lab Control Number:

21M03292 _____
21M03291 _____
21M03303 _____
21M03304 _____
21M03320 _____

Evaluator:
 _____

11/16/2021

 Date

Batch QC Summary Form

Analyte: Radium-228

Control Standard/LFB: ID: C6-001 pCi/mL: 13.3 (use 10 diluted)

Spike Solution: ID: C6-001 pCi/mL: 13.3 (use 10 mL)

Spike Recovery Calculation: Sample: 21M03287-1c

$$\text{Calculation: } \frac{(141.1) (1.000) - (1.4) (1.000)}{133} \times 100 = 105\%$$

Batch QC Evaluation:

Parameter	Criteria	Pass	Fail	N/A
Control Std./LFB	+/- 20 %	x		
Spike Recovery	80 - 120 %	x		
Blank	< or = 3 x Uncertainty	x		
Duplicate 1	95% confidence interval overlap	x		
Duplicate 2 *	95% confidence interval overlap			x

* Required for batch size greater than 10 samples.

Conclusions:

 x Batch QC Passes**
 Batch QC Fails
 Batch QC Passes, with exceptions**:

Reruns Required: _____

Narrative:

**All QC data provided in this section of the report met the acceptance criteria specified in the analytical methods and procedures. State Maximum Contamination Levels (MCLs) are not evaluated in this report.

Batch Listing by Lab Control Number:

21M03226 _____
21M03282 _____
21M03287 _____
21M03288 _____
21M03291 _____
21M03292 _____
21M03303 _____

Evaluator:
 _____

11/30/2021

 Date

