

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

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

REPLACEMENT PLAN - DETERMINATION OF WATER RIGHT NO. 3640-BD

AQUIFER: DENVER

APPLICANT: MARY W. CONTRERAS AND JOSE A. CONTRERAS

In compliance with Section 37-90-107.5, CRS, and the Designated Basin Rules, 2 CCR 410-1 (“Rules” or “Rule”), Mary W. Contreras and Jose A. Contreras (“Applicant”) submitted an application for a replacement plan to allow the withdrawal of ground water from the Denver Aquifer in accordance with Determination of Water Right No. 3640-BD.

FINDINGS

1. Pursuant to Section 37-90-107(7), CRS, in a Findings and Order dated February 4, 2019, the Ground Water Commission (“Commission”) approved a Determination of Water Right, no. 3640-BD, for the Denver Aquifer (“Aquifer”), summarized as follows.
 - a. The determination quantified an amount of water from beneath 5.105 acres of overlying land generally described as a portion of Lot 18 of the Hadden Heights Subdivision located in the SE1/4 of Section 13, Township 13 South, Range 65 West of the 6th P.M., in El Paso County (“Overlying Land”).
 - b. The total volume of underlying ground water that may be withdrawn from the Aquifer shall not exceed 216 acre-feet and the allowed average annual amount of ground water that may be withdrawn from the Aquifer shall not exceed 2.16 acre-feet.
 - c. The use of the allowed amount of underlying ground water shall be limited to the following beneficial uses: domestic, irrigation of lawn and garden, greenhouse irrigation, vehicle and structure washing, stock watering and replacement. The place of use shall be limited to the above described 5.105 acres of Overlying Land.
 - d. In accordance with Rule 5.3.6 the withdrawal of the subject ground water 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, the ground water is considered to be not-nontributary, and 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 withdraw the subject ground water.
2. The subject water is Designated Ground water 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 Commission has jurisdiction.
3. Withdrawal of the subject ground water would deplete the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin, which, according to Rule 5.2.6.2, has been determined to be over appropriated. Such depletion would unreasonably impair existing alluvial rights withdrawing water from that alluvial aquifer.

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4. Pursuant to Rule 5.6.1 this plan must be adequate to prevent any material injury to water rights of other appropriators, which for purposes of this plan means large capacity wells withdrawing water from the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin.
5. Pursuant to Rule 5.3.6.2(C) 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.
6. The subject application for the replacement plan was received by the Commission on November 6, 2018.
7. The Applicant proposes to divert 1 acre-foot annually from the Denver Aquifer for a period of 215 years. The Denver aquifer water will be withdrawn through an existing well located on a residential lot. The Denver aquifer well is proposed to divert 1 acre-foot of water annually for domestic (in home use, lawn and garden irrigation and domestic animal watering), irrigation and replacement.
8. At a continuous withdrawal of 1 acre-feet annually for 215 years, total depletions to the alluvial aquifer system of the Upper Black Squirrel Creek Designated Ground Water Basin would steadily increase to 0.087 acre-feet per year in the 215th year, which is equal to 8.67% of pumping, as shown in Exhibit A.
9. The Applicant proposes to provide 0.18 acre-feet per year of replacement water to the alluvial aquifer system of the Upper Black Squirrel Creek Designated Ground Water Basin. The proposed source of replacement water is septic and leaching field return flows from the in-house use of the ground water to be pumped under the plan. The Applicant estimates that return flows will consist of 90% of the water used for in-house purposes. Assuming a total annual amount for in-house use of 0.20 acre-feet, the return flow would be 0.18 acre-feet annually.
10. The subject property is located within the drainage of Black Squirrel Creek, and the return flows will flow to the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin. The Applicant proposes to aggregate all replacements to the drainage in which the well or wells will operate, in accordance with Guideline 2007-1.
11. So long as the septic and leaching treatment systems for the in-house use of the water are constructed and operated in compliance with state and county health department standards the plan would not cause unreasonable impairment of water quality of the alluvial aquifer.
12. Records in this office indicate that the Applicant controls the water right to be used as the source of replacement water, consisting of Determination of Water Right No. 3640-BD.
13. In accordance with Rule 5.6.2 the application was referred to the Upper Black Squirrel Creek Ground Water Management District on December 19, 2018. No written recommendations from the district were received.
14. In accordance with Sections 37-90-107.5 and 37-90-112, CRS, the application was published in the Ranchland News newspaper on December 27, 2018 and January 3, 2019. No objections to the application were received within the time limit set by statute.

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15. 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.
16. According to Rule 5.6.2 of the Designated Basin Rules:
 - a. The Applicant has 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.
17. Based on the above, no material injury will occur to the water rights of large capacity wells producing from the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water Basin, due to diversions from the Denver Aquifer, if operated under this replacement plan, subject to the conditions given below.

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 a replacement plan to allow the withdrawal of ground water from the Denver Aquifer underlying 5.105 acres that are the subject of Determination of Water Right no. 3640-BD is approved subject to the following conditions:

18. The Denver aquifer water will be withdrawn through an existing well located on a residential lot. The Denver aquifer well is proposed to divert 1 acre-foot of water annually for domestic (in home use, lawn and garden irrigation and domestic animal watering), irrigation and replacement.
19. The allowed annual amount of ground water to be withdrawn from the Aquifer by the well operating under this plan shall not exceed 1 acre-foot.
20. A totalizing flow meter shall be installed on the well. The well owner shall maintain the meter in good working order.
21. Permanent records of all withdrawals of ground water from the well shall be recorded at least annually by the well owners, permanently maintained, and provided to the Commission and the Upper Black Squirrel Creek Ground Water Management District upon request.
22. Pumping under this plan is limited to a period of 215 years. The year of first use of this replacement plan shall be the calendar year of construction of a well permitted pursuant to this plan or permitting of an existing well pursuant to the plan.
23. Return flows from in-house use of ground water shall occur through individual on-lot non-evaporative septic systems located within the 5.105 acres of Overlying land that are the subject of Determination of Water Right No. 3640-BD.
24. The septic systems must be constructed and operated to state and county health department standards.

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25. Replacement of depletions must be provided annually in the acre-feet amounts shown in Exhibit A. Annual replacement requirements may be computed by pro-rating between the values given on Exhibit A, or for simplicity may be taken as the amount shown in the next succeeding 5 year increment.
26. The Applicant or their successor(s) are responsible for ensuring that replacement water is provided to the alluvial aquifer as required by this plan, and that the replacement prevents any material injury to the water rights of other appropriators. The annual replacement requirement and the annual amount of replacement water provided shall be calculated and reported on a form acceptable to the Commission. The annual amount of replacement water provided must be no less than the annual replacement requirement on a yearly basis. No credit shall be claimed by the Applicant for an oversupply of replacement water provided to the alluvium during previous years.
27. The Applicant must provide the required annual amount of replacement water for the first 100 years, or for as long as a well is operated pursuant to this plan, whichever is longer.
28. To assure adequate return flows, the well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served by the well.
29. So long as the well continues to pump and supply an occupied dwelling, the plan's required replacement obligations, shown in Exhibit A, will be met. Should the well cease pumping for in-house use within the first 100 years an amended or alternate replacement plan must be obtained that will make the required replacement deliveries.
30. The Applicant or their successor(s) must gather, record and maintain permanent records of all information pertaining to operation of this plan, which shall include, but is not be limited to, those items identified below. The Applicant must submit records to the Commission and the Upper Black Squirrel Creek Ground Water Management District on forms acceptable to the Commission, on an annual basis for the previous calendar year, by February 15th of the following year.
 - a. Identification of the well permit issued and well constructed under this plan.
 - b. The amount of water diverted by the well, both annually and cumulatively since operation of the plan began.
 - c. The number of occupied dwellings served by the well.
 - d. The number of square feet irrigated by the well.
 - e. The number of large domestic animals served by the well.
 - f. The return flows occurring from use of the well operating under the plan, assuming 0.18 acre-feet per year (90% of the water used for in-house purposes) enters the alluvial aquifer as replacement water from each occupied dwelling.
 - g. Any other information the Commission deems relevant and necessary to operation, monitoring, accounting, or administration of the plan.
31. The Applicant or their successor(s) are fully responsible for the operation, monitoring, and accounting of the replacement plan. In the event a lot with a well permitted or operating pursuant to this plan is sold, evidence of the sale and notification to the new owner of their responsibility under the replacement plan shall accompany that year's accounting.

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32. In the event the permitted well is not operated in accordance with the conditions of this replacement plan, it shall be subject to administration, including orders to cease diverting ground water.
33. All terms and conditions of Determination of Water Right No. 3640-BD must be met.
34. Pursuant to Designated Basin Rule 5.6.1(F), 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.
35. 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 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.

Dated this Dated this 4th day of February, 2019.

By: 

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



Keith Vander Horst, P.E.
Chief of Water Supply, Basins

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Prepared by: jmw