

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS OF WATER
FOR
CIRCLE A SUBDIVISION**

The Daniel B. Andres Trust ("Declarant") is the sole owner of real property which is more particularly described as the S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, Township 11 South, Range 65 West of the 6th P.M., currently known as 17110 E. Goshawk Rd., Colorado Springs, CO 80908, depicted on the **Exhibit A** Plat, attached hereto and incorporated by this reference generally known as the Circle A Minor Subdivision ("Circle A") and hereinafter referenced as the "Subdivision." Declarant desires to place limited protective covenants, conditions, restrictions, and reservations relating to water rights upon the Subdivision to protect the Subdivision's quality residential living environment, to protect its desirability, attractiveness and value, and to ensure compliance with all applicable groundwater determinations concerning water and water rights to be utilized within the Subdivision.

The Declarant hereby declares that all of the Subdivision as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision, and for assurance of legal water usage, and all of which shall run with the land and be binding on and inure to benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

Certain documents are recorded in the real estate records of the Clerk and Recorder of El Paso County, Colorado at the reception numbers noted below, and referred to in this Declaration of Covenants as pertaining to the Subdivision. These include the Determination of Water Right No. 4040-BD (Laramie-Fox Hills) recorded at Reception No. 221147903, Determination of Water Right No. 4041-BD (Arapahoe) recorded at Reception No. 221147900, Determination of Water Right No. 4042-BD (Denver) recorded at Reception No. 221147902, Determination of Water Right No. 4043-BD (Dawson) recorded at Reception No. 221147901, and associated Replacement Plan for the Dawson aquifer recorded at Reception No. 221147904 ("Replacement Plan"), all attached hereto as **Exhibit B**.

NOW, THEREFORE, the following Declaration of Water Covenants is made:

1. Water Replacement Plan.

A. Replacement Plan/Summary. The Subdivision shall be subject to the obligations and requirements as set forth in the November 9, 2020 Findings and Order approving the Replacement Plan, as recorded at Reception No. 221147904 of the El Paso County Clerk and Recorder, which is incorporated by reference ("Replacement Plan", **Exhibit B**). The Replacement Plan concerns the water rights and water supply for the

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Subdivision and creates obligations upon the Lot owners, which run with the land. The water supply for the Subdivision shall be by individual wells to the not-nontributary Dawson aquifer, under the Replacement Plan. The Replacement Plan contemplates that each Lot Owner will be responsible for obtaining and complying with a permit from the Colorado Division of Water Resources and drilling an individual well for water service to their residence and lot to the Dawson aquifer, and the use of such well shall be consistent with the terms of the Replacement Plan, including wastewater treatment through a non-evaporative individual septic disposal system ("ISDS"). Lot Owners will be the owners of a portion of the water within the Dawson aquifer underlying their respective lots, and also own a pro-rata portion of the Replacement Plan associated with the Dawson aquifer. The Lot Owners will be jointly responsible for reporting and administration based on pumping records. The Declarant reserves all remaining water in the Denver, Arapahoe, and Laramie-Fox Hills Denver Basin aquifers unless separately deeded.

2. Water Rights Ownership.

A. Declarant will transfer and assign to each Lot owner interest in the not-nontributary Dawson aquifer, as determined in the Ground Water Determinations and the Replacement Plan, as the physical source of supply. The Dawson aquifer wells on each of the Lots with existing Permit Nos. 85145-F (Lot 2), 85146-F (Lot 3), and 85148-F (Lot 1) shall be augmented per the Replacement Plan. In order to comply with El Paso County's 300-year water supply requirement, Declarant shall convey to the Lot Owners at least 405 acre-feet total (1.35 acre-feet/year x 300 years) of Dawson aquifer water. The Declarant hereby reserves all remaining amounts of water determined in the Ground Water Determinations for the Denver, Arapahoe, and Laramie-Fox Hills aquifers.

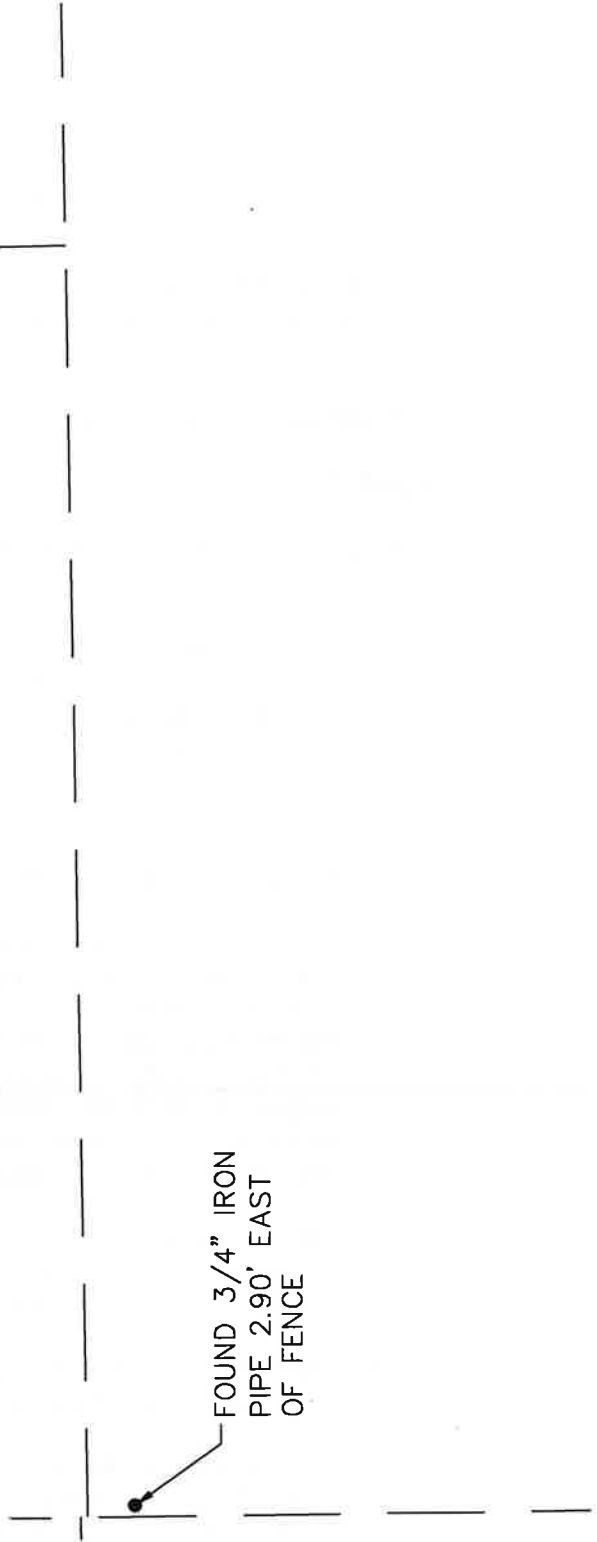
B. The Declarant will further assign to the Lot Owners all obligations and responsibilities for compliance with the Replacement Plan, including monitoring, accounting and reporting obligations. The Lot Owners shall assume and perform these obligations and responsibilities. By this assignment to the Lot owners, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Replacement Plan. Such conveyance shall be subject to the obligations and responsibilities of the Replacement Plan and said water rights may not be separately assigned, transferred, or encumbered by the Lot owners. Notwithstanding an assignment by the Declarant to the Lot Owners, as long as the Declarant is also a Lot Owner, the Declarant shall continue to bear all obligations and responsibilities for compliance with the Replacement Plan. The Lot Owners shall maintain such obligations and responsibilities in perpetuity, unless relieved of such replacement responsibilities by determination of the Ground Water Commission, or other properly entered administrative relief.

C. Each Lot owner's water rights in the not-nontributary Dawson aquifer underlying their respective Lot shall remain subject to the Replacement Plan, and shall transfer automatically upon the transfer of title to each Lot as an appurtenance, including the transfer by the Declarant to the initial owner of a Lot, whether or not separately deeded

A SUBDIVISION
THE NORTH

GILCREASE, BRANDY
17320 GOSHAWK
(RECEPTION NO. 216102369)

FOUND 3/4" IRON
PIPE 2.90' EAST
OF FENCE



**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR A DETERMINATION OF A RIGHT TO AN ALLOCATION OF
GROUNDWATER IN THE KIOWA-BIJOU DESIGNATED GROUNDWATER BASIN

DETERMINATION NO.: 4043-BD

AQUIFER: Dawson

APPLICANT: Daniel B. Andres Trust

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

FINDINGS

1. The application was received by the Commission on August 26, 2019.
2. The Applicant requests a determination of right to an allocation of designated groundwater (Determination) in the Dawson aquifer (Aquifer) underlying 14.9 acres, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., in El Paso County (Overlying Land). According to a Nontributary Groundwater Landownership Statement dated August 19, 2019, attached hereto as Exhibit A, the Applicant owns the 14.9 acres of land, which are further described in said Ownership Statement, and claims control of the right to the groundwater in the Aquifer underlying the land.
3. The Overlying Land is located within the boundaries of the Kiowa-Bijou Designated Groundwater Basin. The Commission has jurisdiction over the designated groundwater that is the subject of this Determination.
4. The Commission's Staff has evaluated the application relying on the claims to control of the groundwater in the Aquifer underlying the Overlying Land made by the Applicant.
5. The Applicant intends to apply the groundwater in the Aquifer underlying the Overlying Land to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The Applicant's proposed place of use of the groundwater in the Aquifer underlying the Overlying Land is the above described 14.9 acres of Overlying Land.
6. Pursuant to section 37-90-107(7)(a), and in accordance with the Designated Basin Rules, the Commission shall allocate the groundwater in the Aquifer underlying the Overlying Land on the basis of the ownership of the Overlying Land.
7. The amount of water in storage in the Aquifer underlying the 14.9 acres of Overlying Land claimed by the Applicant is 1,360 acre-feet. This determination was based on the following as specified in the Designated Basin Rules.
 - a. The average specific yield of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 20 percent.

- b. The average thickness of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 455 feet.
8. A review of the records in the Office of the State Engineer has disclosed that a well operating pursuant to section 37-90-105, C.R.S., (i.e. a small-capacity well), permit no. 101207, is located on the Overlying Land and is permitted to withdraw 1 acre-foot per year of groundwater from the Aquifer from beneath the Overlying Land. The applicant has indicated that permit no. 101207 will be cancelled and the well re-permitted to operate pursuant to this Determination. The amount of water considered to have been historically withdrawn from the aquifer by this well is 42 acre-feet. In applying Rule 5.3.2.5 of the Designated Basin Rules to computing the amount of water available for allocation in this Determination, the amount of groundwater in the Aquifer underlying the Overlying Land available for allocation in this Determination is reduced by 42 acre-feet to 1,318 acre-feet. Except for that well, review of the records in the Office of the State Engineer finds no other previous allocations or permitted withdrawals from the Aquifer underlying the Overlying Land.
 9. Pursuant to section 37-90-107(7)(c)(III), an approved determination of a right to an allocation shall be considered a final determination of the amount of groundwater so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.
 10. Pursuant to section 37-90-107(7)(d), the Commission has authority to issue well permits pursuant to subsection 107(7) (i.e. permits for large capacity wells) for the withdrawal of designated groundwater from the Aquifer. Pursuant to section 37-90-107(7)(a) the Commission shall adopt the necessary rules to carry out the provisions of subsection (7). Pursuant to section 37-90-111(h), C.R.S., the Commission is empowered to adopt rules necessary to carry out the provisions of Article 90 of Title 37. In accordance with that authority, the Commission has adopted the Rules and Regulations for the Management and Control of Designated Ground Water (2 CCR 410-1) ("Designated Basin Rules", or "Rules").
 11. Large capacity well permits issued pursuant to section 37-90-107(7) are subject to the following provisions of statute and the Designated Basin Rules.
 - a. Pursuant to section 37-90-107(7)(a) well permits issued pursuant to subsection 107(7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The 1,318 acre-feet of water in the Aquifer underlying the Overlying Land available for allocation in this Determination, if permitted for withdrawal by large capacity wells on the basis of an aquifer life of one hundred years, would result in an allowed average annual amount of withdrawal of 13.18 acre-feet per year.
 - b. Any amounts of groundwater in the Aquifer allocated in this Determination that are permitted for withdrawal pursuant to section 37-90-105, by small capacity well permits issued after the issuance of this Determination reduce the amount of water, and the allowed average annual amount of withdrawal, that may be withdrawn by wells permitted pursuant to section 37-90-107(7).
 - c. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of groundwater from the Aquifer underlying the Overlying Land will, within one hundred years, deplete the flow of a natural stream or an alluvial aquifer at

an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the groundwater in the Aquifer underlying the Overlying Land is considered to be not-nontributary groundwater as defined in Rule 4.2.23 of the Designated Basin Rules. Withdrawal of water from the Aquifer underlying the Overlying Land would impact the alluvial aquifer of the Kiowa-Bijou Designated Groundwater Basin, 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, that provides for the replacement of the actual depletion to the alluvial aquifer and is adequate to prevent any material injury to existing water rights of other appropriators, is required prior to approval of well permits for wells to be located on this land area to withdraw the groundwater in the Aquifer underlying the Overlying Land. Pursuant to the Rules the replacement plan shall provide for the depletion of the 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, assuming water table conditions in the Aquifer.

12. Pursuant to section 37-90-105(1), the State Engineer has the authority to approve small capacity well permits. While water withdrawn from the Aquifer from beneath the Overlying Land by small capacity wells may consist of the groundwater allocated herein, the Commission recognizes that in approving small capacity permits the State Engineer is not bound by the terms and conditions of this Determination, and may approve small capacity permits based on standards and with such conditions as the State Engineer considers appropriate.
13. The ability of wells permitted to withdraw the authorized amount of water from this nonrenewable Aquifer may be less than the one hundred years upon which the amount of water in the Aquifer is allocated, due to anticipated water level declines.
14. In accordance with sections 37-90-107(7)(c)(II) and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on September 17, 2020 and September 24, 2020. No objections to the application were received within the time limit set by statute.

ORDER

In accordance with section 37-90-107(7) and the Designated Basin Rules, the Commission hereby determines a right to an allocation of designated groundwater in the Dawson Aquifer underlying 14.9 acres of land, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., further described in Exhibit A, subject to the following conditions.

15. The amount (i.e. volume) of water in the Aquifer underlying the 14.9 acres of Overlying Land allocated herein is 1,318 acre-feet (Underlying Groundwater).
16. The amount (i.e. volume) of Underlying Groundwater allocated herein shall be considered final, except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes, if such information indicates that the initial estimate of the amount of Underlying Groundwater in the Aquifer was incorrect.

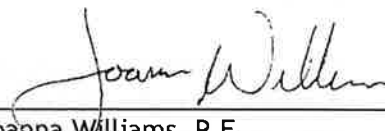
17. Approval of this Determination meets the requirements of section 37-90-107(7)(d)(II), that requires a determination of groundwater to be withdrawn by a well be made prior to the granting of a well permit pursuant to section 37-90-107(7).
18. Well permits issued pursuant to section 37-90-107(7), (i.e. large capacity wells) and this Determination are subject to the following conditions.
 - a. The total amount of Underlying Groundwater that may be withdrawn from the Aquifer by all large capacity wells permitted pursuant to this Determination may not exceed a volume of 1,318 acre-feet, less any amount of the Underlying Groundwater allocated herein permitted to be withdrawn by small capacity wells issued permits pursuant to section 37-90-105 after the issuance of this Determination. The amounts of water permitted to be withdrawn by such small capacity wells shall be considered to be one-hundred times the annual withdrawals permitted to be withdrawn by those wells.
 - b. The allowed average annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water shall be equal to the volume of water permitted to be withdrawn by that well (or well field) divided by one-hundred years.
 - c. The allowed maximum annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water may exceed the allowed average annual amount of withdrawal allowed by the well permit(s) as long as the total volume of water withdrawn by such well(s) does not exceed the product of the number of years since the date(s) of issuance of the well permit(s) times the allowed average annual amount of withdrawal allowed by the well permit(s).
 - d. The Applicant may pump the allowed average annual amount of withdrawal and the allowed maximum annual amount of withdrawal from one or more wells of a well field in any combination, so long as the total combined withdrawal of the wells does not exceed the amounts described in this Order.
 - e. Commission approval of a replacement plan, that provides for the replacement of the actual depletion to the alluvial aquifer and is adequate to prevent any material injury to existing water rights of other appropriators in the alluvial aquifer, is required prior to approval of well permits that allow the withdraw of the Underlying Groundwater. The replacement plan shall provide for the depletion of the 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, assuming water table conditions in the Aquifer.
 - f. The use of the Underlying Groundwater shall be limited to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The place of use of the Underlying Groundwater shall be limited to the above described 14.9 acres of Overlying Land. The Underlying Groundwater that is the subject of this Determination may be reused and successively used to extinction to the extent dominion and control over the water is maintained and its volume can be distinguished from the volume of any stream system into which it is introduced to the satisfaction of the Commission.
 - g. The wells must be located on the above described 14.9 acres of Overlying Land.

- h. No well shall be located within 600 feet of any existing large-capacity well in the same Aquifer unless a Waiver of Claim of Injury is obtained from the owner of the existing well or unless the Commission, after a hearing, finds that circumstances in a particular instance warrant that a well may be permitted without regard to this limitation.
 - i. The wells must be constructed to withdraw water from only the Dawson Aquifer.
 - j. The entire depth of each well must be geophysically logged prior to installing the casing in the same manner as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - k. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and permanently maintained by the well owner and submitted to the Commission.
 - l. The well shall be marked in a conspicuous place with this determination number, the well permit number, and the name of the Aquifer. The well owner shall take necessary means and precautions to preserve these markings.
19. Existing well permit no. 101207 must be canceled and a new permit issued for that well to operate pursuant to this Determination.
20. A copy of this Determination shall be recorded by the Applicant in the public records of the county in which the Overlying Land is located so that a title examination of the above described 14.9 acres of Overlying Land area, or any part thereof, shall reveal the existence of this Determination.
21. The right to an allocation of designated groundwater determined herein is a vested property right with specific ownership. Some or all of the water right may be transferred independent of the land under which the right originated. Any action taken that is intended to convey, transfer, and/or sell the subject water right shall explicitly identify this Determination number, the specific Aquifer, and the total amount (i.e. volume) of the right that is being conveyed.

Dated this 9th day of November, 2020.



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

By: 
Joanna Williams, P.E.
Water Resource Engineer

or referenced. The ground water rights in the Dawson aquifer subject to the Replacement Plan cannot and shall not be severable from each respective Lot, and each Lot owner covenants that it cannot sell, convey, trade, barter, assign, or transfer such ground water rights to any party separate from the conveyance of the Lot.

D. Should the Declarant choose to separately deed, assign, or transfer any additional not-nontributary or nontributary Denver Basin groundwater in the Dawson aquifer, Denver aquifer, Arapahoe aquifer, or nontributary Laramie-Fox Hills aquifer underlying each Lot other than the 405 acre-feet in the Dawson aquifer described in Paragraph 2.A, the groundwater may be used in said Lot owner's sole and complete discretion, subject to the terms and conditions of this Declaration, the Replacement Plan, and any restrictive deed language.

E. The Dawson aquifer water rights conveyed to each Lot Owner described in Paragraph 2.A, above, and the return flows therefrom, shall not be sold, leased or otherwise used for any purpose inconsistent with the Replacement Plan and these Covenants, and shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered.

3. Water Administration.

A. Each Lot Owner shall limit the pumping of each individual Dawson aquifer well to a maximum of 1.35 acre-feet annually per lot, for a combined total of 4.05 acre-feet annually, consistent with the Replacement Plan. Each Lot Owner shall further ensure that the allocations of use of water resulting from such pumping as provided in the Replacement Plan is maintained, as between in-house, irrigation, stock water, greenhouse, commercial, recreation and other allowed uses. Each Lot Owner shall use non-evaporative septic systems in order to ensure that return flows from such systems are made to the stream system to replace depletions during pumping and shall not be sold, traded or used for any other purpose. The Lot Owners, as the owners of all obligations and responsibilities under the Replacement Plan, shall administer and enforce the Replacement Plan as applies to each Lot Owner's respective Lot and pumping from individual Dawson aquifer wells. Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources under the Replacement Plan and taking all necessary and required actions under the Replacement Plan to protect and preserve the ground water rights for all Lot Owners. Each Lot Owner has the right to specifically enforce, by injunction if necessary, the Replacement Plan against any other Lot Owner for failing to comply with the Lot Owner's respective obligations under the Replacement Plan, including the enforcement of the terms and conditions of well permits issued pursuant to the Replacement Plan, and the reasonable legal costs and fees for such enforcement shall be borne by the party against whom such action is necessary. The use of the not-nontributary Dawson ground water rights owned by each Lot Owner is restricted and regulated by the terms and conditions of the Replacement Plan and these Declarations, including, without limitation, that each Lot Owner is subject to the maximum annual well pumping of 1.35 acre feet, for a combined total of 4.05 acre feet annually. Failure of a Lot Owner to comply with the terms of the Replacement Plan may result in

an order from the Division of Water Resources under the Replacement Plan to curtail use of ground water rights.

B. Each Lot owner shall promptly and fully account to the Division of Water Resources for total pumping from the individual well to the not-nontributary Dawson Aquifer on each Lot, including for any irrigation, stockwater, commercial, recreational, or other permitted/allowed uses as may be required under the Replacement Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division or Water Resources.

4. Well Permits.

A. Each Lot Owner shall be responsible for complying with the well permit for the individual well to the not-nontributary Dawson aquifer for provision of water supply to their respective Lot, to the extent quantities deeded to such Lot owner therein are sufficient for such Lot owner's needs, and are responsible for ensuring an existing permit is in the Lot Owner's name. All such Dawson aquifer wells shall be constructed and operated in compliance with the County's subdivision approval, the Replacement Plan, the well permit obtained from the Colorado Division of Water Resources, and the applicable rules and regulations of the Colorado Division of Water Resources. The costs of the construction, operation, maintenance and repair of such individual well, and delivery of water therefrom to the residence located on such Lot, shall be at each Lot owner's respective expense. Each Lot owner shall comply with any and all requirements of the Division of Water Resources to log their well, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide the diversion information necessary for the accounting and administration of the Replacement Plan. It is acknowledged that well permits, and individual wells, may be in place on some of the Lots at the time of sale, and by this Declaration no warranty as to the suitability or utility of such permits or structures is made nor shall be implied.

B. No party guarantees to the Lot owners the physical availability or the adequacy of water quality from any well to be drilled under the Replacement Plan. The Denver Basin aquifers which are the subject of the Replacement Plan and Determinations are considered a nonrenewable water resource and due to anticipated water level declines the useful or economic life of the aquifers' water supply may be less than the 100 years allocated by state statutes or the 300 years of El Paso County water supply requirements, despite current groundwater modelling to the contrary.

5. Compliance. The Lot owners shall perform and comply with all terms, conditions, and obligations of the Replacement Plan, and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources pursuant to the Replacement Plan, as well as all applicable statutory and regulatory authority.

6. Amendments. Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply or Replacement Plan, or the

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**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR A DETERMINATION OF A RIGHT TO AN ALLOCATION OF
GROUNDWATER IN THE KIOWA-BIJOU DESIGNATED GROUNDWATER BASIN

DETERMINATION NO.: 4042-BD

AQUIFER: Denver

APPLICANT: Daniel B. Andres Trust

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

FINDINGS

1. The application was received by the Commission on August 26, 2019.
2. The Applicant requests a determination of right to an allocation of designated groundwater (Determination) in the Denver aquifer (Aquifer) underlying 14.9 acres, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., in El Paso County (Overlying Land). According to a Nontributary Groundwater Landownership Statement dated August 19, 2019, attached hereto as Exhibit A, the Applicant owns the 14.9 acres of land, which are further described in said Ownership Statement, and claims control of the right to the groundwater in the Aquifer underlying the land.
3. The Overlying Land is located within the boundaries of the Kiowa-Bijou Designated Groundwater Basin. The Commission has jurisdiction over the designated groundwater that is the subject of this Determination.
4. The Commission's Staff has evaluated the application relying on the claims to control of the groundwater in the Aquifer underlying the Overlying Land made by the Applicant.
5. The Applicant intends to apply the groundwater in the Aquifer underlying the Overlying Land to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The Applicant's proposed place of use of the groundwater in the Aquifer underlying the Overlying Land is the above described 14.9 acres of Overlying Land.
6. Pursuant to section 37-90-107(7)(a), and in accordance with the Designated Basin Rules, the Commission shall allocate the groundwater in the Aquifer underlying the Overlying Land on the basis of the ownership of the Overlying Land.
7. The amount of water in storage in the Aquifer underlying the 14.9 acres of Overlying Land claimed by the Applicant is 925 acre-feet. This determination was based on the following as specified in the Designated Basin Rules.
 - a. The average specific yield of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 17 percent.

- b. The average thickness of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 365 feet.
8. A review of the records in the Office of the State Engineer has disclosed that none of the groundwater in the Aquifer underlying the Overlying Land has been either previously determined to be allocated by the Commission, has been permitted for withdrawal by large capacity wells that have rights that were initiated prior to November 19, 1973 that are subject to section 37-90-107(7)(b), or has been permitted for withdrawal by existing small capacity wells withdrawing water under permits issued pursuant to section 37-90-105, C.R.S. The amount of designated groundwater in the Aquifer underlying the Overlying Land that is available for allocation in this Determination is 925 acre-feet.
9. Pursuant to section 37-90-107(7)(c)(III), an approved determination of a right to an allocation shall be considered a final determination of the amount of groundwater so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.
10. Pursuant to section 37-90-107(7)(d), the Commission has authority to issue well permits pursuant to subsection 107(7) (i.e. permits for large capacity wells) for the withdrawal of designated groundwater from the Aquifer. Pursuant to section 37-90-107(7)(a) the Commission shall adopt the necessary rules to carry out the provisions of subsection (7). Pursuant to section 37-90-111(h), C.R.S., the Commission is empowered to adopt rules necessary to carry out the provisions of Article 90 of Title 37. In accordance with that authority, the Commission has adopted the Rules and Regulations for the Management and Control of Designated Ground Water (2 CCR 410-1) ("Designated Basin Rules", or "Rules").
11. Large capacity well permits issued pursuant to section 37-90-107(7) are subject to the following provisions of statute and the Designated Basin Rules.
 - a. Pursuant to section 37-90-107(7)(a) well permits issued pursuant to subsection 107(7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The 925 acre-feet of water in the Aquifer underlying the Overlying Land available for allocation in this Determination, if permitted for withdrawal by large capacity wells on the basis of an aquifer life of one hundred years, would result in an allowed average annual amount of withdrawal of 9.25 acre-feet per year.
 - b. Any amounts of groundwater in the Aquifer allocated in this Determination that are permitted for withdrawal pursuant to section 37-90-105, by small capacity well permits issued after the issuance of this Determination reduce the amount of water, and the allowed average annual amount of withdrawal, that may be withdrawn by wells permitted pursuant to section 37-90-107(7).
 - c. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of groundwater from the Aquifer underlying the Overlying Land will not, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the groundwater in the Aquifer underlying the Overlying Land is nontributary groundwater as defined in Rule 4.2.22 of the Designated Basin Rules. Pursuant to the Rules, no more than 98% of the amount of the groundwater in the Aquifer underlying the Overlying Land withdrawn annually shall be consumed.

12. Pursuant to section 37-90-105(1), the State Engineer has the authority to approve small capacity well permits. While water withdrawn from the Aquifer from beneath the Overlying Land by small capacity wells may consist of the groundwater allocated herein, the Commission recognizes that in approving small capacity permits the State Engineer is not bound by the terms and conditions of this Determination, and may approve small capacity permits based on standards and with such conditions as the State Engineer considers appropriate.
13. The ability of wells permitted to withdraw the authorized amount of water from this nonrenewable Aquifer may be less than the one hundred years upon which the amount of water in the Aquifer is allocated, due to anticipated water level declines.
14. In accordance with sections 37-90-107(7)(c)(II) and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on September 17, 2020 and September 24, 2020. No objections to the application were received within the time limit set by statute.

ORDER

In accordance with section 37-90-107(7) and the Designated Basin Rules, the Commission hereby determines a right to an allocation of designated groundwater in the Denver Aquifer underlying 14.9 acres of land, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., further described in Exhibit A, subject to the following conditions.

15. The amount (i.e. volume) of water in the Aquifer underlying the 14.9 acres of Overlying Land allocated herein is 925 acre-feet (Underlying Groundwater).
16. The amount (i.e. volume) of Underlying Groundwater allocated herein shall be considered final, except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes, if such information indicates that the initial estimate of the amount of Underlying Groundwater in the Aquifer was incorrect.
17. Approval of this Determination meets the requirements of section 37-90-107(7)(d)(II), that requires a determination of groundwater to be withdrawn by a well be made prior to the granting of a well permit pursuant to section 37-90-107(7).
18. Well permits issued pursuant to section 37-90-107(7), (i.e. large capacity wells) and this Determination are subject to the following conditions.
 - a. The total amount of Underlying Groundwater that may be withdrawn from the Aquifer by all large capacity wells permitted pursuant to this Determination may not exceed a volume of 925 acre-feet, less any amount of the Underlying Groundwater allocated herein permitted to be withdrawn by small capacity wells issued permits pursuant to section 37-90-105 after the issuance of this Determination. The amounts of water permitted to be withdrawn by such small capacity wells shall be considered to be one-hundred times the annual withdrawals permitted to be withdrawn by those wells.
 - b. The allowed average annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water shall be equal to the volume of water permitted to be withdrawn by that well (or well field) divided by one-hundred years.

- c. The allowed maximum annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water may exceed the allowed average annual amount of withdrawal allowed by the well permit(s) as long as the total volume of water withdrawn by such well(s) does not exceed the product of the number of years since the date(s) of issuance of the well permit(s) times the allowed average annual amount of withdrawal allowed by the well permit(s).
 - d. The Applicant may pump the allowed average annual amount of withdrawal and the allowed maximum annual amount of withdrawal from one or more wells of a well field in any combination, so long as the total combined withdrawal of the wells does not exceed the amounts described in this Order.
 - e. No more than 98% of the amount of Underlying Groundwater withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the Underlying Groundwater withdrawn annually is being consumed.
 - f. The use of the Underlying Groundwater shall be limited to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The place of use of the Underlying Groundwater shall be limited to the above described 14.9 acres of Overlying Land. The Underlying Groundwater that is the subject of this Determination may be reused and successively used to extinction to the extent dominion and control over the water is maintained and its volume can be distinguished from the volume of any stream system into which it is introduced to the satisfaction of the Commission.
 - g. The wells must be located on the above described 14.9 acres of Overlying Land.
 - h. No well shall be located within 600 feet of any existing large-capacity well in the same Aquifer unless a Waiver of Claim of Injury is obtained from the owner of the existing well or unless the Commission, after a hearing, finds that circumstances in a particular instance warrant that a well may be permitted without regard to this limitation.
 - i. The wells must be constructed to withdraw water from only the Denver Aquifer.
 - j. The entire depth of each well must be geophysically logged prior to installing the casing in the same manner as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - k. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and permanently maintained by the well owner and submitted to the Commission.
 - l. The well shall be marked in a conspicuous place with this determination number, the well permit number, and the name of the Aquifer. The well owner shall take necessary means and precautions to preserve these markings.
19. A copy of this Determination shall be recorded by the Applicant in the public records of the county in which the Overlying Land is located so that a title examination of the above

Determination No.: 4042-BD
Aquifer: Denver
Applicant: Daniel B. Andres Trust

Page 5

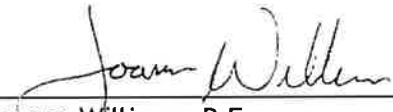
described 14.9 acres of Overlying Land area, or any part thereof, shall reveal the existence of this Determination.

20. The right to an allocation of designated groundwater determined herein is a vested property right with specific ownership. Some or all of the water right may be transferred independent of the land under which the right originated. Any action taken that is intended to convey, transfer, and/or sell the subject water right shall explicitly identify this Determination number, the specific Aquifer, and the total amount (i.e. volume) of the right that is being conveyed.

Dated this 9th day of November, 2020.



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

By: 
Joanna Williams, P.E.
Water Resource Engineer

Prepared by: jmw
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**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR A DETERMINATION OF A RIGHT TO AN ALLOCATION OF
GROUNDWATER IN THE KIOWA-BIJOU DESIGNATED GROUNDWATER BASIN

DETERMINATION NO.: 4041-BD

AQUIFER: Arapahoe

APPLICANT: Daniel B. Andres Trust

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

FINDINGS

1. The application was received by the Commission on August 26, 2019.
2. The Applicant requests a determination of right to an allocation of designated groundwater (Determination) in the Arapahoe aquifer (Aquifer) underlying 14.9 acres, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., in El Paso County (Overlying Land). According to a Nontributary Groundwater Landownership Statement dated August 19, 2019, attached hereto as Exhibit A, the Applicant owns the 14.9 acres of land, which are further described in said Ownership Statement, and claims control of the right to the groundwater in the Aquifer underlying the land.
3. The Overlying Land is located within the boundaries of the Kiowa-Bijou Designated Groundwater Basin. The Commission has jurisdiction over the designated groundwater that is the subject of this Determination.
4. The Commission's Staff has evaluated the application relying on the claims to control of the groundwater in the Aquifer underlying the Overlying Land made by the Applicant.
5. The Applicant intends to apply the groundwater in the Aquifer underlying the Overlying Land to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The Applicant's proposed place of use of the groundwater in the Aquifer underlying the Overlying Land is the above described 14.9 acres of Overlying Land.
6. Pursuant to section 37-90-107(7)(a), and in accordance with the Designated Basin Rules, the Commission shall allocate the groundwater in the Aquifer underlying the Overlying Land on the basis of the ownership of the Overlying Land.
7. The amount of water in storage in the Aquifer underlying the 14.9 acres of Overlying Land claimed by the Applicant is 659 acre-feet. This determination was based on the following as specified in the Designated Basin Rules.
 - a. The average specific yield of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 17 percent.

- b. The average thickness of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 260 feet.
8. A review of the records in the Office of the State Engineer has disclosed that none of the groundwater in the Aquifer underlying the Overlying Land has been either previously determined to be allocated by the Commission, has been permitted for withdrawal by large capacity wells that have rights that were initiated prior to November 19, 1973 that are subject to section 37-90-107(7)(b), or has been permitted for withdrawal by existing small capacity wells withdrawing water under permits issued pursuant to section 37-90-105, C.R.S. The amount of designated groundwater in the Aquifer underlying the Overlying Land that is available for allocation in this Determination is 659 acre-feet.
9. Pursuant to section 37-90-107(7)(c)(III), an approved determination of a right to an allocation shall be considered a final determination of the amount of groundwater so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.
10. Pursuant to section 37-90-107(7)(d), the Commission has authority to issue well permits pursuant to subsection 107(7) (i.e. permits for large capacity wells) for the withdrawal of designated groundwater from the Aquifer. Pursuant to section 37-90-107(7)(a) the Commission shall adopt the necessary rules to carry out the provisions of subsection (7). Pursuant to section 37-90-111(h), C.R.S., the Commission is empowered to adopt rules necessary to carry out the provisions of Article 90 of Title 37. In accordance with that authority, the Commission has adopted the Rules and Regulations for the Management and Control of Designated Ground Water (2 CCR 410-1) (“Designated Basin Rules”, or “Rules”).
11. Large capacity well permits issued pursuant to section 37-90-107(7) are subject to the following provisions of statute and the Designated Basin Rules.
 - a. Pursuant to section 37-90-107(7)(a) well permits issued pursuant to subsection 107(7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The 659 acre-feet of water in the Aquifer underlying the Overlying Land available for allocation in this Determination, if permitted for withdrawal by large capacity wells on the basis of an aquifer life of one hundred years, would result in an allowed average annual amount of withdrawal of 6.59 acre-feet per year.
 - b. Any amounts of groundwater in the Aquifer allocated in this Determination that are permitted for withdrawal pursuant to section 37-90-105, by small capacity well permits issued after the issuance of this Determination reduce the amount of water, and the allowed average annual amount of withdrawal, that may be withdrawn by wells permitted pursuant to section 37-90-107(7).
 - c. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of groundwater from the Aquifer underlying the Overlying Land will not, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the groundwater in the Aquifer underlying the Overlying Land is nontributary groundwater as defined in Rule 4.2.22 of the Designated Basin Rules.

Pursuant to the Rules, no more than 98% of the amount of the groundwater in the Aquifer underlying the Overlying Land withdrawn annually shall be consumed.

12. Pursuant to section 37-90-105(1), the State Engineer has the authority to approve small capacity well permits. While water withdrawn from the Aquifer from beneath the Overlying Land by small capacity wells may consist of the groundwater allocated herein, the Commission recognizes that in approving small capacity permits the State Engineer is not bound by the terms and conditions of this Determination, and may approve small capacity permits based on standards and with such conditions as the State Engineer considers appropriate.
13. The ability of wells permitted to withdraw the authorized amount of water from this nonrenewable Aquifer may be less than the one hundred years upon which the amount of water in the Aquifer is allocated, due to anticipated water level declines.
14. In accordance with sections 37-90-107(7)(c)(II) and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on September 17, 2020 and September 24, 2020. No objections to the application were received within the time limit set by statute.

ORDER

In accordance with section 37-90-107(7) and the Designated Basin Rules, the Commission hereby determines a right to an allocation of designated groundwater in the Arapahoe Aquifer underlying 14.9 acres of land, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., further described in Exhibit A, subject to the following conditions.

15. The amount (i.e. volume) of water in the Aquifer underlying the 14.9 acres of Overlying Land allocated herein is 659 acre-feet (Underlying Groundwater).
16. The amount (i.e. volume) of Underlying Groundwater allocated herein shall be considered final, except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes, if such information indicates that the initial estimate of the amount of Underlying Groundwater in the Aquifer was incorrect.
17. Approval of this Determination meets the requirements of section 37-90-107(7)(d)(II), that requires a determination of groundwater to be withdrawn by a well be made prior to the granting of a well permit pursuant to section 37-90-107(7).
18. Well permits issued pursuant to section 37-90-107(7), (i.e. large capacity wells) and this Determination are subject to the following conditions.
 - a. The total amount of Underlying Groundwater that may be withdrawn from the Aquifer by all large capacity wells permitted pursuant to this Determination may not exceed a volume of 659 acre-feet, less any amount of the Underlying Groundwater allocated herein permitted to be withdrawn by small capacity wells issued permits pursuant to section 37-90-105 after the issuance of this Determination. The amounts of water permitted to be withdrawn by such small capacity wells shall be considered to be one-hundred times the annual withdrawals permitted to be withdrawn by those wells.


- b. The allowed average annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water shall be equal to the volume of water permitted to be withdrawn by that well (or well field) divided by one-hundred years.
- c. The allowed maximum annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water may exceed the allowed average annual amount of withdrawal allowed by the well permit(s) as long as the total volume of water withdrawn by such well(s) does not exceed the product of the number of years since the date(s) of issuance of the well permit(s) times the allowed average annual amount of withdrawal allowed by the well permit(s).
- d. The Applicant may pump the allowed average annual amount of withdrawal and the allowed maximum annual amount of withdrawal from one or more wells of a well field in any combination, so long as the total combined withdrawal of the wells does not exceed the amounts described in this Order.
- e. No more than 98% of the amount of Underlying Groundwater withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the Underlying Groundwater withdrawn annually is being consumed.
- f. The use of the Underlying Groundwater shall be limited to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The place of use of the Underlying Groundwater shall be limited to the above described 14.9 acres of Overlying Land. The Underlying Groundwater that is the subject of this Determination may be reused and successively used to extinction to the extent dominion and control over the water is maintained and its volume can be distinguished from the volume of any stream system into which it is introduced to the satisfaction of the Commission.
- g. The wells must be located on the above described 14.9 acres of Overlying Land.
- h. No well shall be located within 600 feet of any existing large-capacity well in the same Aquifer unless a Waiver of Claim of Injury is obtained from the owner of the existing well or unless the Commission, after a hearing, finds that circumstances in a particular instance warrant that a well may be permitted without regard to this limitation.
- i. The wells must be constructed to withdraw water from only the Arapahoe Aquifer.
- j. The entire depth of each well must be geophysically logged prior to installing the casing in the same manner as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
- k. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and permanently maintained by the well owner and submitted to the Commission.
- l. The well shall be marked in a conspicuous place with this determination number, the well permit number, and the name of the Aquifer. The well owner shall take necessary means and precautions to preserve these markings.

19. A copy of this Determination shall be recorded by the Applicant in the public records of the county in which the Overlying Land is located so that a title examination of the above described 14.9 acres of Overlying Land area, or any part thereof, shall reveal the existence of this Determination.
20. The right to an allocation of designated groundwater determined herein is a vested property right with specific ownership. Some or all of the water right may be transferred independent of the land under which the right originated. Any action taken that is intended to convey, transfer, and/or sell the subject water right shall explicitly identify this Determination number, the specific Aquifer, and the total amount (i.e. volume) of the right that is being conveyed.

Dated this 9th day of November, 2020.



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

By: 
Joanna Williams, P.E.
Water Resource Engineer

Prepared by: jmw
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**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR A DETERMINATION OF A RIGHT TO AN ALLOCATION OF
GROUNDWATER IN THE KIOWA-BIJOU DESIGNATED GROUNDWATER BASIN

DETERMINATION NO.: 4040-BD

AQUIFER: Laramie-Fox Hills

APPLICANT: Daniel B. Andres Trust

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

FINDINGS

1. The application was received by the Commission on August 26, 2019.
2. The Applicant requests a determination of right to an allocation of designated groundwater (Determination) in the Laramie-Fox Hills aquifer (Aquifer) underlying 14.9 acres, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., in El Paso County (Overlying Land). According to a Nontributary Groundwater Landownership Statement dated August 19, 2019, attached hereto as Exhibit A, the Applicant owns the 14.9 acres of land, which are further described in said Ownership Statement, and claims control of the right to the groundwater in the Aquifer underlying the land.
3. The Overlying Land is located within the boundaries of the Kiowa-Bijou Designated Groundwater Basin. The Commission has jurisdiction over the designated groundwater that is the subject of this Determination.
4. The Commission's Staff has evaluated the application relying on the claims to control of the groundwater in the Aquifer underlying the Overlying Land made by the Applicant.
5. The Applicant intends to apply the groundwater in the Aquifer underlying the Overlying Land to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The Applicant's proposed place of use of the groundwater in the Aquifer underlying the Overlying Land is the above described 14.9 acres of Overlying Land.
6. Pursuant to section 37-90-107(7)(a), and in accordance with the Designated Basin Rules, the Commission shall allocate the groundwater in the Aquifer underlying the Overlying Land on the basis of the ownership of the Overlying Land.
7. The amount of water in storage in the Aquifer underlying the 14.9 acres of Overlying Land claimed by the Applicant is 425 acre-feet. This determination was based on the following as specified in the Designated Basin Rules.
 - a. The average specific yield of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 15 percent.

- b. The average thickness of those saturated aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use is 190 feet.
8. A review of the records in the Office of the State Engineer has disclosed that none of the groundwater in the Aquifer underlying the Overlying Land has been either previously determined to be allocated by the Commission, has been permitted for withdrawal by large capacity wells that have rights that were initiated prior to November 19, 1973 that are subject to section 37-90-107(7)(b), or has been permitted for withdrawal by existing small capacity wells withdrawing water under permits issued pursuant to section 37-90-105, C.R.S. The amount of designated groundwater in the Aquifer underlying the Overlying Land that is available for allocation in this Determination is 425 acre-feet.
 9. Pursuant to section 37-90-107(7)(c)(III), an approved determination of a right to an allocation shall be considered a final determination of the amount of groundwater so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.
 10. Pursuant to section 37-90-107(7)(d), the Commission has authority to issue well permits pursuant to subsection 107(7) (i.e. permits for large capacity wells) for the withdrawal of designated groundwater from the Aquifer. Pursuant to section 37-90-107(7)(a) the Commission shall adopt the necessary rules to carry out the provisions of subsection (7). Pursuant to section 37-90-111(h), C.R.S., the Commission is empowered to adopt rules necessary to carry out the provisions of Article 90 of Title 37. In accordance with that authority, the Commission has adopted the Rules and Regulations for the Management and Control of Designated Ground Water (2 CCR 410-1) ("Designated Basin Rules", or "Rules").
 11. Large capacity well permits issued pursuant to section 37-90-107(7) are subject to the following provisions of statute and the Designated Basin Rules.
 - a. Pursuant to section 37-90-107(7)(a) well permits issued pursuant to subsection 107(7) shall allow withdrawals on the basis of an aquifer life of one hundred years. The 425 acre-feet of water in the Aquifer underlying the Overlying Land available for allocation in this Determination, if permitted for withdrawal by large capacity wells on the basis of an aquifer life of one hundred years, would result in an allowed average annual amount of withdrawal of 4.25 acre-feet per year.
 - b. Any amounts of groundwater in the Aquifer allocated in this Determination that are permitted for withdrawal pursuant to section 37-90-105, by small capacity well permits issued after the issuance of this Determination reduce the amount of water, and the allowed average annual amount of withdrawal, that may be withdrawn by wells permitted pursuant to section 37-90-107(7).
 - c. In accordance with Rule 5.3.6 of the Designated Basin Rules, it has been determined that withdrawal of groundwater from the Aquifer underlying the Overlying Land will not, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the groundwater in the Aquifer underlying the Overlying Land is nontributary groundwater as defined in Rule 4.2.22 of the Designated Basin Rules. Pursuant to the Rules, no more than 98% of the amount of the groundwater in the Aquifer underlying the Overlying Land withdrawn annually shall be consumed.

12. Pursuant to section 37-90-105(1), the State Engineer has the authority to approve small capacity well permits. While water withdrawn from the Aquifer from beneath the Overlying Land by small capacity wells may consist of the groundwater allocated herein, the Commission recognizes that in approving small capacity permits the State Engineer is not bound by the terms and conditions of this Determination, and may approve small capacity permits based on standards and with such conditions as the State Engineer considers appropriate.
13. The ability of wells permitted to withdraw the authorized amount of water from this nonrenewable Aquifer may be less than the one hundred years upon which the amount of water in the Aquifer is allocated, due to anticipated water level declines.
14. In accordance with sections 37-90-107(7)(c)(II) and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on September 17, 2020 and September 24, 2020. No objections to the application were received within the time limit set by statute.

ORDER

In accordance with section 37-90-107(7) and the Designated Basin Rules, the Commission hereby determines a right to an allocation of designated groundwater in the Laramie-Fox Hills Aquifer underlying 14.9 acres of land, generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., further described in Exhibit A, subject to the following conditions.

15. The amount (i.e. volume) of water in the Aquifer underlying the 14.9 acres of Overlying Land allocated herein is 425 acre-feet (Underlying Groundwater).
16. The amount (i.e. volume) of Underlying Groundwater allocated herein shall be considered final, except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes, if such information indicates that the initial estimate of the amount of Underlying Groundwater in the Aquifer was incorrect.
17. Approval of this Determination meets the requirements of section 37-90-107(7)(d)(II), that requires a determination of groundwater to be withdrawn by a well be made prior to the granting of a well permit pursuant to section 37-90-107(7).
18. Well permits issued pursuant to section 37-90-107(7), (i.e. large capacity wells) and this Determination are subject to the following conditions.
 - a. The total amount of Underlying Groundwater that may be withdrawn from the Aquifer by all large capacity wells permitted pursuant to this Determination may not exceed a volume of 425 acre-feet, less any amount of the Underlying Groundwater allocated herein permitted to be withdrawn by small capacity wells issued permits pursuant to section 37-90-105 after the issuance of this Determination. The amounts of water permitted to be withdrawn by such small capacity wells shall be considered to be one-hundred times the annual withdrawals permitted to be withdrawn by those wells.
 - b. The allowed average annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water shall be equal to the volume of water permitted to be withdrawn by that well (or well field) divided by one-hundred years.

- c. The allowed maximum annual amount of withdrawal by any large capacity well (or well field) permitted to withdraw the allocated water may exceed the allowed average annual amount of withdrawal allowed by the well permit(s) as long as the total volume of water withdrawn by such well(s) does not exceed the product of the number of years since the date(s) of issuance of the well permit(s) times the allowed average annual amount of withdrawal allowed by the well permit(s).
 - d. The Applicant may pump the allowed average annual amount of withdrawal and the allowed maximum annual amount of withdrawal from one or more wells of a well field in any combination, so long as the total combined withdrawal of the wells does not exceed the amounts described in this Order.
 - e. No more than 98% of the amount of Underlying Groundwater withdrawn annually shall be consumed. The Commission may require well owners to demonstrate periodically that no more than 98% of the Underlying Groundwater withdrawn annually is being consumed.
 - f. The use of the Underlying Groundwater shall be limited to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The place of use of the Underlying Groundwater shall be limited to the above described 14.9 acres of Overlying Land. The Underlying Groundwater that is the subject of this Determination may be reused and successively used to extinction to the extent dominion and control over the water is maintained and its volume can be distinguished from the volume of any stream system into which it is introduced to the satisfaction of the Commission.
 - g. The wells must be located on the above described 14.9 acres of Overlying Land.
 - h. No well shall be located within 600 feet of any existing large-capacity well in the same Aquifer unless a Waiver of Claim of Injury is obtained from the owner of the existing well or unless the Commission, after a hearing, finds that circumstances in a particular instance warrant that a well may be permitted without regard to this limitation.
 - i. The wells must be constructed to withdraw water from only the Laramie-Fox Hills Aquifer.
 - j. The entire depth of each well must be geophysically logged prior to installing the casing in the same manner as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - k. A totalizing flow meter or other Commission approved measuring device shall be installed on each well and maintained in good working order by the well owner. Annual diversion records shall be collected and permanently maintained by the well owner and submitted to the Commission.
 - l. The well shall be marked in a conspicuous place with this determination number, the well permit number, and the name of the Aquifer. The well owner shall take necessary means and precautions to preserve these markings.
19. A copy of this Determination shall be recorded by the Applicant in the public records of the county in which the Overlying Land is located so that a title examination of the above

Determination No.: 4040-BD
Aquifer: Laramie-Fox Hills
Applicant: Daniel B. Andres Trust

Page 5

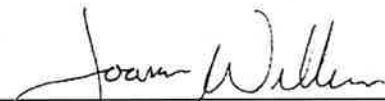
described 14.9 acres of Overlying Land area, or any part thereof, shall reveal the existence of this Determination.

20. The right to an allocation of designated groundwater determined herein is a vested property right with specific ownership. Some or all of the water right may be transferred independent of the land under which the right originated. Any action taken that is intended to convey, transfer, and/or sell the subject water right shall explicitly identify this Determination number, the specific Aquifer, and the total amount (i.e. volume) of the right that is being conveyed.

Dated this 9th day of November, 2020.



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

By: 
Joanna Williams, P.E.
Water Resource Engineer

Prepared by: jmw
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**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR REPLACEMENT PLAN TO ALLOW THE WITHDRAWAL OF GROUNDWATER FROM THE DAWSON AQUIFER IN THE KIOWA-BIJOU DESIGNATED GROUNDWATER BASIN.

REPLACEMENT PLAN NO. 4043-RP

FOR DETERMINATION OF WATER RIGHT NO. 4043-BD

AQUIFER: DAWSON

APPLICANT: DANIEL B. ANDRES TRUST

In compliance with section 37-90-107.5, C.R.S. and the Designated Basin Rules, 2 CCR 410-1 (Rules or Rule), Daniel B. Andres Trust (Applicant) submitted an application for a replacement plan to allow the withdrawal of groundwater from the Dawson Aquifer that has been allocated by Determination of Water Right No. 4043-BD.

FINDINGS

1. Pursuant to section 37-90-107(7), C.R.S., in a Findings and Order dated November 9, 2020, the Ground Water Commission (Commission) approved a Determination of a Right to an Allocation of Groundwater, No. 4043-BD, from the Dawson Aquifer (Aquifer), summarized as follows.
 - a. The determination quantified an amount of water from beneath 14.9 acres generally described as the S1/2 of the S1/2 of the SW1/4 of the NE1/4 and the N1/2 of the SE1/4 of the SW1/4 of the NE1/4 of Section 23, Township 11 South, Range 65 West, 6th P.M., in El Paso County (Overlying Land).
 - b. The amount of water in the aquifer that was allocated was 1,318 acre-feet, and the allowed average annual amount of groundwater to be withdrawn from the aquifer was limited to 13.18 acre-feet per year (subject to adjustment by the Commission to conform to actual local aquifer characteristics).
 - c. The use of groundwater is limited to the following beneficial uses: domestic including in-home use, irrigation of landscape and gardens, domestic animal watering, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage.
 - d. Withdrawal of the subject groundwater 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 groundwater 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 groundwater.
2. The subject water is Designated Groundwater located within the boundaries of the Kiowa-Bijou Designated Groundwater Basin. The Commission has jurisdiction over the withdrawal of the water by large capacity wells that are permitted pursuant to section 37-90-107(7).
3. Withdrawal of the subject groundwater would deplete the alluvial aquifer of the Kiowa-Bijou Designated Groundwater Basin, the alluvial aquifer of the Upper Big Sandy Designated Groundwater Basin and the alluvial aquifer of the Upper Black Squirrel Creek Designated Groundwater Basin, all of which, according to Rules 5.2.4.2, 5.2.7.2 and 5.2.6.2,

respectively, have been determined to be over appropriated. Such depletion would unreasonably impair existing large capacity alluvial rights withdrawing water from those alluvial aquifers.

4. Pursuant to Rule 5.6.1.A 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 Kiowa-Bijou Designated Groundwater Basin, the alluvial aquifer of the Upper Big Sandy Designated Groundwater Basin and the alluvial aquifer of the Upper Black Squirrel Creek Designated Groundwater 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 application for the replacement plan was received by the Commission on August 26, 2019.
7. The Applicant proposes to divert 4.05 acre-feet annually from the Dawson Aquifer for a period of 300 years. The Dawson aquifer water will be withdrawn through 3 wells, including the existing well that was constructed under well permit no. 101207, to be located on 3 residential lots. Each Dawson Aquifer well is proposed to divert 1.35 acre-feet of water annually for domestic purposes including in-home use, irrigation of landscape and gardens, domestic animals, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The land on which the wells will be located is the 14.9 acres of Overlying Land described above.
8. At a continuous withdrawal of 4.05 acre-feet annually for 300 years, depletions to the alluvial aquifer systems of the Kiowa-Bijou Designated Groundwater Basin, Upper Big Sandy Designated Groundwater Basin and Upper Black Squirrel Creek Designated Groundwater Basin would steadily increase to 0.128 acre-feet per year in the 300th year, which is equal to 3.16% of pumping, as shown in Exhibit A.
9. The Applicant proposes to provide 0.675 acre-feet per year of replacement water to the alluvial aquifer system of the Kiowa-Bijou Designated Groundwater Basin. The proposed source of replacement water is septic and leaching field return flows from the in-house use of the groundwater to be pumped under the plan. The Applicant estimates that return flows from each lot will consist of 90% of the water used for in-house purposes. Assuming each lot uses a total annual amount for in-house use of 0.25 acre-feet, the return flow per lot would be 0.225 acre-feet annually, and the return flows under the plan will total 0.675 acre-feet per year for all 3 lots at full build out.
10. The subject property is located within the drainage of West Kiowa Creek, and the return flows will flow to the alluvial aquifer of the Kiowa-Bijou 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. Pursuant to Rule 5.6.1.B this plan must be adequate to prevent unreasonable impairment of water quality. Pursuant to Rule 5.6.1.B.1.b, if the replacement source water is from an onsite wastewater treatment system permitted by a local health agency and the applicant demonstrates the source is in compliance with that permit there shall be a rebuttable presumption of no unreasonable impairment of water quality.

12. Pursuant to Rule 5.6.1.C this plan, including the proposed uses of the water withdrawn pursuant to the plan, must not be speculative, and must be technically and financially feasible and within the Applicant's ability to complete. The plan, including the proposed uses of the water withdrawn pursuant to the plan, is not speculative. The plan appears technically and financially feasible and within the Applicant's ability to complete.
13. Pursuant to Rule 5.6.1.D this plan must be able to be operated and administered on an ongoing and reliable basis. The plan appears to be able to be operated and administered on an ongoing and reliable basis.
14. Pursuant to Rule 5.6.1.F replacement source water must be physically and legally available in time, place and amount to prevent material injury. As determined in Determination of Water Right No. 4043-BD water is currently available in the amounts and for the number of years proposed to be diverted.
15. Pursuant to Rule 5.6.1.G the replacement source water must be legally available for use. 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. 4043-BD, and such water is legally available for use pursuant to this plan.
16. In accordance with sections 37-90-107.5 and 37-90-112, C.R.S., the application was published in the Ranchland News newspaper on September 17, 2020 and September 24, 2020. No objections to the application were received within the time limit set by statute.
17. According to Rule 5.6.1:
 - a. The Applicant has the burden of proving the adequacy of the plan in all respects.
 - b. If the applicant meets its burden of proof, the Commission shall grant approval of the plan which shall include any terms and conditions established the Commission.
18. The Commission Staff has evaluated the application pursuant to section 37-90-107.5, and the requirements of Rule 5.3.6.2(C) and Rule 5.6, and finds that the requirements have been meet and the plan may be approved to allow diversions from the Dawson Aquifer if operated subject to the conditions given below.

ORDER

In accordance with section 37-90-107.5, and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for a replacement plan to allow the withdrawal of groundwater from the Dawson Aquifer underlying 14.9 acres that are the subject of Determination of Water Right no. 4043-BD is approved subject to the following conditions:

19. The Dawson aquifer water will be withdrawn through 3 wells, including the existing well that was constructed under well permit no. 101207, to be located on 3 residential lots. Each Dawson Aquifer well may divert 1.35 acre-feet of water annually for domestic purposes including in-home use, irrigation of landscape and gardens, domestic animals, commercial, fire protection, recreational, greenhouse, replacement and the watering of stock animals, either directly or after storage. The land on which the wells will be located is the 14.9 acres of Overlying Land described above.
20. The applicant must obtain a new permit for the existing well (currently permit no. 101207)

to operate that well pursuant to this replacement plan.

21. The allowed annual amount of groundwater to be withdrawn from the Aquifer by all wells operating under this plan shall not exceed 4.05 acre-feet. The allowed annual amount of water to be withdrawn from each on-lot well shall not exceed 1.35 acre-feet.
22. A totalizing flow meter shall be installed on each well. The well owner shall maintain the meter in good working order.
23. Permanent records of all withdrawals of groundwater from each well shall be recorded at least annually by the well owners, permanently maintained, and provided to the Commission.
24. Pumping under this plan is limited to a period of 300 years. The year of first use of this replacement plan shall be the calendar year of construction of a well permitted pursuant to this plan or permitting of an existing well pursuant to the plan.
25. Return flows from in-house use of groundwater shall occur through individual on-lot non-evaporative septic systems located within the 14.9 acres of Overlying Land that are the subject of Determination of Water Right No. 4043-BD. The septic systems must be constructed and operated in compliance with a permit issued by a local health agency.
26. 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.
27. The Applicant or their successor(s) are responsible for ensuring that replacement water is provided to the alluvial aquifer as required by this plan. 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.
28. 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.
29. To assure adequate return flows, at least one 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 any of the wells.
30. So long as at least one well continues to pump and supply an occupied dwelling, the plan's required replacement obligations, shown in Exhibit A, will be met. Should all wells cease pumping for in-house use within the first 100 years an amended or alternate replacement plan must be obtained that will replace actual depletions to the alluvial aquifer so as to prevent any material injury to water rights of other appropriators.
31. The Applicant (and their successors) must gather 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 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 all well permits issued and wells constructed under this plan.
 - b. The amount of water diverted by each well and all wells in total, both annually and cumulatively since operation of the plan began.
 - c. The number of occupied dwellings served by each well.
 - d. The number of square feet irrigated by each well.
 - e. The number of large domestic animals served by each well.
 - f. The return flows occurring from use of all wells operating under the plan, assuming 0.225 acre-feet per year per occupied single family dwelling (90% of the water used for in-house purposes) enters the alluvial aquifer as replacement water.
 - g. Any other information the Commission deems relevant and necessary to operation, monitoring, accounting, or administration of the plan.
32. The Applicant (and their successors) 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, identification of the well that was sold and evidence that the new owner has been notified of their responsibilities under the replacement plan shall accompany that year's accounting.
33. Any covenants adopted for this subdivision should contain a description of the replacement plan, including the limitations on diversions and use of water for each well and lot, the requirement to meter and record all well pumping, and information on how records are to be reported and the plan is to be administered.
34. In the event the permitted well or wells are not operated in accordance with the conditions of this replacement plan, they shall be subject to administration, including orders to cease diverting groundwater.
35. All terms and conditions of Determination of Water Right No. 4043-BD must be met.
36. Pursuant to Rule 5.6.1.E, a copy of this Findings and Order shall be recorded by the Applicant in the clerk and recorder's records of El Paso County, so that a title examination of the land on which the structures involved in this plan are located reveals the existence of this plan.

Dated this 9th day of November, 2020.



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

By: 

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