

DECLARATION OF PROTECTIVE COVENANTS

LOUDERMILK SUBDIVISION FILING NO. 1

KNOW ALL MEN BY THESE PRESENTS:

The Loudermilk Living Trust, Arvin Loudermilk and Cheryl Loudermilk—Trustees, hereinafter called “Declarant”, is the owner of certain real property described as the south half of the southeast quarter of the northeast quarter of Section 23, Township 11 South, Range 65 west of the 6th principal meridian in El Paso County, Colorado (the “Property”). The Property is being subdivided into two (2) lots and the subdivision name will be “Loudermilk Subdivision”.

The Declarant hereby declares that all the Property shall be used, improved, occupied, owned, resided upon and conveyed subject to the covenants set forth herein for the purpose of enhancing and protecting the Property. The covenants set forth herein shall run with the Property and be binding on and inure to the benefit of all persons or entities having any right, title or interest in the Property, and said persons or entities shall hereby also be bound by the dedications, restrictions, easements and notes on the Loudermilk Subdivision Filing No. 1 plat, which is recorded at Reception No. _____ of the records of the Clerk and Recorder of El Paso County, Colorado, as well as the regulations and ordinances of the County of El Paso, Colorado.

1. The water supply for each of the two lots will be from individual Dawson aquifer wells which will be permitted and operate pursuant to Determination of Water Right No. 3619-BD (“Determination”), as recorded in the public records of El Paso County on February 20, 2019 at Reception No. 219017414, and Replacement Plan—Determination of Water Right No. 3619-BD (“Replacement Plan”), as recorded in the public records of El Paso County on February 20, 2019 at Reception No. 219017413. A total supply of 1,710 acre-feet of Dawson Aquifer water is available for use in the Loudermilk Subdivision. Lot 1 will be served by a well permitted by Well Permit No. 83011-F, and Lot 2 will be served by a new well to be permitted pursuant to the Replacement Plan. There are no post-pumping depletion requirements because the Replacement Plan limits the wells to pumping for 300 years. Each well may withdraw a maximum of 1 acre-foot per year for up to 300 years for the following uses:

- A. Inhouse Use: 0.3 acre-feet per year.
- B. Irrigation Use: 0.65 acre-feet per year for irrigation of 10,000 square feet of home lawn, garden and trees.
- C. Stockwatering Use: 0.05 acre-feet per year for watering of 4 large domestic animals.

2. Upon the conveyance of either lot by the Loudermilk Living Trust or by any subsequent lot owner, the applicable owner shall convey to the grantee of such lot no less than 300 acre-feet of the water and water rights in the Dawson aquifer, as determined by the Determination, and an undivided one-half interest in the Replacement Plan (the "Water Rights"). At the time of the initial conveyance of Lot 1, the Loudermilk Living Trust shall also assign Well Permit No. 83011-F to the grantee of Lot 1. The Water Rights shall run with Lots 1 and 2 of the Property, must be transferred to all successors and assigns of each grantee, may not be separated from transfer of title of each Lot on the Property, and may not be separately sold, bartered, liened, or encumbered. The Water Rights shall be considered an appurtenance to said Lots and shall be conveyed as such with all future deeds to said Lots. No separate deed is required to affect a conveyance of the water rights. Because the amount of water still available will diminish over time, Declarant is not required to warrant the amount of water in any aquifer, but shall warrant title against all persons or entities claiming title under them (i.e., a special warranty deed which does not warrant title to the amount of water that will be used).

3. Declarant and all subsequent owners of the lots within the Property shall be subject to and shall carry out all provisions of the Replacement Plan, a copy of which is attached hereto as Exhibit 1 and provisions incorporated herein by this reference, including *without limitation* the following:

A. Pumping from each Dawson aquifer well may occur only if there is an occupied single-family dwelling that is generating return flows via a non-evaporative septic system on the lot upon which the well is located. This will accommodate in-house use return flows, replacing depletions, during the pumping period through an individual on-lot, non-evaporative septic system. The septic system shall be constructed in compliance with all applicable regulations.

B. Each lot may use a maximum of 1 acre-foot per year of Dawson aquifer groundwater pursuant to the Replacement Plan. Said groundwater is the water supply for the lot and sale or use off the lot is prohibited.

C. The return flows from the non-evaporative septic system on each lot shall comply with the amounts, if any, set forth in the Replacement Plan. Such return flows shall only be used to replace groundwater depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose.

D. At least one Dawson aquifer 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 well.

E. A totalizing flow meter must be installed on each well, and the lot owner will maintain the meter in good working order. A permanent record of annual withdrawals from the well will be recorded at least annually by the lot owner and provided to the Colorado Ground Water Commission. Said record will include all information required in paragraph 29 of the Replacement Plan attached hereto as Exhibit 1.

EXHIBIT 1

Replacement Plan–Determination of Water Right
No. 3619-BD

**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 DAWSON AQUIFER IN THE KIOWA-BIJOU DESIGNATED GROUND WATER BASIN.

REPLACEMENT PLAN - DETERMINATION OF WATER RIGHT NO. 3619-BD

AQUIFER: DAWSON

APPLICANT: LOUDERMILK LIVING TRUST

In compliance with Section 37-90-107.5, CRS, and the Designated Basin Rules, 2 CCR 410-1 ("Rules" or "Rule"), Loudermilk Living Trust ("Applicant") submitted an application for a replacement plan to allow the withdrawal of ground water from the Dawson Aquifer in accordance with Determination of Water Right No. 3619-BD.

FINDINGS

1. Pursuant to Section 37-90-107(7), CRS, in a Findings and Order dated December 11, 2018, the Ground Water Commission ("Commission") approved a Determination of Water Right, no. 3619-BD, for the Dawson Aquifer ("Aquifer"), summarized as follows.
 - a. The determination quantified an amount of water from beneath 20 acres of overlying land generally described as the S1/2 of the SE1/4 of the NE1/4, Section 23, Township 11 South, Range 65 West, 6th P.M., in El Paso County.
 - b. The total volume of underlying ground water that may be withdrawn from the Aquifer shall not exceed 1,710 acre-feet and the allowed average annual amount of ground water that may be withdrawn from the Aquifer shall not exceed 17.1 acre-feet.
 - c. The use of the allowed amount of underlying ground water shall be limited to the following beneficial uses: domestic, including in-house use, irrigation, commercial, industrial, fire protection, stockwatering, replacement purposes and recreational.
 - 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 Kiowa-Bijou Designated Ground Water Basin. The Commission has jurisdiction.
3. Withdrawal of the subject ground water would deplete the alluvial aquifer of the Kiowa-Bijou Designated Ground Water Basin, the alluvial aquifer of the Upper Big Sandy Designated Ground Water Basin and the alluvial aquifer of the Upper Black Squirrel Creek Designated Ground Water 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 alluvial rights withdrawing water from those alluvial aquifers.

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El Paso County, CO



219017413

Aquifer: Dawson

Applicant:

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 Kiowa-Bijou Designated Ground Water Basin, the alluvial aquifer of the Upper Big Sandy Designated Ground Water Basin and 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 October 22, 2018.
7. The Applicant proposes to divert 2 acre-feet annually from the Dawson Aquifer for a period of 300 years. The Dawson aquifer water will be withdrawn through 2 wells. Each Dawson aquifer well is proposed to divert 1 acre-foot of water annually for use in 1 single family residence; irrigation of 10,000 square feet of lawn, garden, and trees; and watering of 4 large domestic animals.
8. At a continuous withdrawal of 2 acre-feet annually for 300 years, total depletions to the alluvial aquifer systems of the Kiowa-Bijou Designated Ground Water Basin, Upper Big Sandy Designated Ground Water Basin and Upper Black Squirrel Creek Designated Ground Water Basin would steadily increase to 0.066 acre-feet per year in the 300th year, which is equal to 3.3% of pumping, as shown in Exhibit A.
9. The Applicant proposes to provide 0.27 acre-feet per year of replacement water to the alluvial aquifer system of the Kiowa-Bijou Designated Ground Water Basin from each well. 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 from each well will consist of 90% of the water used for in-house purposes. Assuming each well uses a total annual amount for in-house use of 0.30 acre-feet, the return flow per lot would be 0.27 acre-feet annually, and the return flows under the plan will total 0.54 acre-feet per year for both wells at full build out.
10. The subject property is located within the drainage of 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. 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. 3619-BD.
13. In accordance with Sections 37-90-107.5 and 37-90-112, CRS, the application was published in the Ranchland News newspaper on November 1, 2018 and November 8, 2018. No objections to the application were received within the time limit set by statute.

14. 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.
15. 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.
16. Based on the above, no material injury will occur to the water rights of large capacity wells producing from the alluvial aquifer of the Kiowa-Bijou Designated Ground Water Basin, the alluvial aquifer of the Upper Big Sandy Designated Ground Water Basin and the alluvial aquifer the Upper Black Squirrel Creek Designated Ground Water Basin, due to diversions from the Dawson 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 Dawson Aquifer underlying 20 acres that are the subject of Determination of Water Right no. 3619-BD is approved subject to the following conditions:

17. The Dawson aquifer water will be withdrawn through 2 wells. The allowed use of ground water for each well under this plan is use in 1 single family residence; irrigation of 10,000 square feet of lawn, garden, and trees; and watering of 4 domestic animals.
18. The allowed annual amount of ground water to be withdrawn from the aquifer by all wells operating under this plan shall not exceed 2 acre-feet. The allowed annual amount of water to be withdrawn from each well shall not exceed 1 acre-foot.
19. A totalizing flow meter shall be installed on each well. The well owner shall maintain the meter in good working order.
20. Permanent records of all withdrawals of ground water from each well shall be recorded at least annually by the well owners, permanently maintained, and provided to the Commission.
21. 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.
22. Return flows from in-house use of ground water shall occur through individual on-lot non-evaporative septic systems located within the 20 acres of overlying land that are the subject of Determination of Water Right No. 3619-BD.
23. The septic systems must be constructed and operated to state and county health department standards.

Aquifer: Dawson

Applicant:

24. 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.
25. 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.
26. 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.
27. 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.
28. 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 make the required replacement deliveries.
29. 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 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 domestic animals served by each well.
 - f. The return flows occurring from use of all wells operating under the plan, assuming 0.27 acre-feet per year per well (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.
30. 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.


Aquifer: Dawson

Applicant:

31. Should the wells be used in a subdivision, any covenants adopted for the subdivision should contain a description of the replacement plan, including the limitations on water use for each lot, metering of well pumping, and how the plan is to be administered.
32. 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 ground water.
33. All terms and conditions of Determination of Water Right No. 3619-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 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 11th day of December, 2018.

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

Exhibit A
Replacement Plan - Determination No.: 3619-BD
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Designated Basin Summary Table for Loudermilk Living Trust Pumping Rate of 2 acre-feet per year for 300 Years from the Dawson aquifer Section(s): Section 23, T11S, R65W, 6th P.M.					
Year	Depletion as a % of Pumping	Annual Depletion (AF/YR)	Year	Depletion as a % of Pumping	Annual Depletion (AF/YR)
5	0.0	0.000	155	1.3	0.027
10	0.0	0.000	160	1.4	0.028
15	0.0	0.000	165	1.5	0.029
20	0.0	0.000	170	1.5	0.031
25	0.0	0.001	175	1.6	0.032
30	0.1	0.001	180	1.7	0.033
35	0.1	0.002	185	1.7	0.035
40	0.1	0.002	190	1.8	0.036
45	0.1	0.003	195	1.9	0.037
50	0.2	0.003	200	1.9	0.039
55	0.2	0.004	205	2.0	0.040
60	0.2	0.005	210	2.1	0.042
65	0.3	0.006	215	2.1	0.043
70	0.3	0.007	220	2.2	0.044
75	0.4	0.008	225	2.3	0.046
80	0.4	0.009	230	2.3	0.047
85	0.5	0.010	235	2.4	0.048
90	0.5	0.011	240	2.5	0.050
95	0.6	0.012	245	2.6	0.051
100	0.7	0.013	250	2.6	0.052
105	0.7	0.014	255	2.7	0.054
110	0.8	0.015	260	2.8	0.055
115	0.8	0.017	265	2.8	0.056
120	0.9	0.018	270	2.9	0.058
125	1.0	0.019	275	3.0	0.059
130	1.0	0.020	280	3.0	0.060
135	1.1	0.022	285	3.1	0.062
140	1.1	0.023	290	3.2	0.063
145	1.2	0.024	295	3.2	0.064
150	1.3	0.026	300	3.3	0.066

Created by Ground Water Commission Staff: jmw on October 24, 2018

Replacement Plan Accounting Reporting Form

Determination of Water Right Number: 3619-BD

Aquifer from which wells produce water: Dawson

Submit to: Colorado Ground Water Commission, 1313 Sherman St., Room 821, Denver, CO 80203

Person responsible for gathering and submitting data (required)

Name: _____

Email address: _____

Mailing Address: _____

Telephone: _____

Calendar year being reported ¹: _____

Calendar year operation of the plan was initiated ²: _____

Year number of operation of the plan ³: _____

Annual replacement water requirement (acre-feet/year) ⁴: _____

Well Permit no. ⁵	Address of property served by this well ⁶	Meter Reading at beginning of year ⁷	Meter Reading at end of year ⁸	Metered pumping this year ⁹	Meter's Units ¹⁰	Date of Meter reading at end of year ¹¹	Metered pumping this year ¹² (acre-feet)	Pumping of this well since initiation of operation of the plan ¹³ (acre-feet)
Total of all wells:								

Well Permit no. ⁵	Address of property served by this well ⁶	Number of Occupied Single Family Dwellings ¹⁴	Amount of Irrigated Land ¹⁵ (ft ²)	Number of Large Domestic Animals ¹⁶	Estimated Return Flow ¹⁷ (acre-feet)
Total of all wells:					

Conversion rates:

1 acre-foot equals 325,851 gallons

1 acre-foot equals 43,560 cubic feet

See reverse side for notes.

Notes:

- 1) Calendar year for which this report is being submitted.
- 2) The calendar year when the first well permitted pursuant to this plan was constructed, or when the first permit for an existing well was issued pursuant to the plan. Once the plan has been initiated this year will not change.
- 3) The number of years after initiation of operation of the plan. The year of initiation is year number 1.
- 4) Equal to "Annual Depletion" on Exhibit A of the Replacement Plan.
- 5) The well permit number of the well being operated pursuant to the plan.
- 6) The address of the property served by the well.
- 7) The reading on the meter at the beginning of the year. Equal to reading on the meter at end of year on last year's reporting form. For the first year of operation of a well this is the meter reading prior to pumping under the plan.
- 8) Reading on the meter at the end of the year.
- 9) The amount of water pumped by the well this year. Equal to the reading on the meter at the end of this year minus reading on the meter at the beginning of the year. If a new meter was installed during the year, explain that fact and report the sum of the readings of the old and new meters over the year.
- 10) Units of measurement shown on the meter.
- 11) Date that the meter was read this year. This should be on December 31st or as close to that date as possible.
- 12) The amount pumped this year, reported in acre-feet.
- 13) The cumulative amount of water pumped by this well since initiation of operation of the plan. Equal to "Pumping of this well since initiation of operation of the plan" on last year's reporting form plus "Pumping of this well this year" on this year's reporting form.
- 14) The number of occupied single family dwellings supplied by the well.
- 15) The amount of irrigated land supplied by the well.
- 16) The number of large domestic animals supplied by the well.
- 17) Return flow consists of water recharged into the alluvial aquifer by way of non-evaporative septic and leaching field system discharges, which are estimated as 0.27 acre-feet per year per well (90 percent of the amount of water supplied to in-house uses by each well supplying an occupied dwelling). Refer to the Findings and Orders of the approved replacement plan.