

**COLORADO GROUND WATER COMMISSION
FINDINGS AND ORDER**

IN THE MATTER OF AN APPLICATION FOR DETERMINATION OF WATER RIGHT TO GROUND WATER IN
THE UPPER BLACK SQUIRREL CREEK DESIGNATED GROUND WATER BASIN

DETERMINATION NO.: 3542-BD

AQUIFER: Denver

APPLICANT: Home Run Restorations Inc.

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

FINDINGS

1. The application was received by the Colorado Ground Water Commission on January 4, 2018.
2. The Applicant requests a determination of right to designated ground water in the Denver Aquifer (hereinafter "Aquifer") underlying 40 acres, generally described as the SE 1/4 of the NE 1/4, Section 33, Township 13 South, Range 64 West, Sixth P.M., in El Paso County. According to a signed Ownership Statement dated December 1, 2017, attached hereto as Exhibit A, the Applicant owns the 40 acres of land, which are further described in said Ownership Statement (hereinafter "Overlying Land"), and claims control of the right to the ground water in the Aquifer underlying this land (hereinafter "Underlying Ground Water").
3. The Overlying Land is located within the boundaries of the Upper Black Squirrel Creek Designated Ground Water Basin and within the Upper Black Squirrel Creek Ground Water Management District. The Colorado Ground Water Commission (hereinafter "Commission") has jurisdiction over the ground water that is the subject of this Determination.
4. The Commission Staff has evaluated the application relying on the claims to control of the Underlying Ground Water in the Aquifer made by the Applicant.
5. The Applicant intends to apply the Underlying Ground Water to the following beneficial uses: residential, lawn and garden irrigation, the watering of domestic animals and replacement. The Applicant's proposed place of use of the Underlying Ground Water is the above described 40 acres of overlying land.
6. The application requests the maximum allowable annual amount of Underlying Ground Water from beneath the Overlying Land.
7. The quantity of water in the Aquifer underlying the 40 acres of Overlying Land claimed by the applicant is 816 acre-feet. This determination was based on the following as specified in the Designated Basin Rules:
 - a. The average specific yield of the saturated permeable material of the Aquifer beneath the Overlying Land that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 17 percent.

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- b. The average thickness of the saturated permeable material of the Aquifer beneath the Overlying Land that could yield a sufficient quantity of water that may be extracted and applied to beneficial use is 120 feet.
8. Pursuant to Section 37-90-107(7)(a), C.R.S., and in accordance with the Designated Basin Rules, the Commission shall allocate the underlying ground water based on ownership of the overlying land and an aquifer life of one hundred years. Should the entire quantity of underlying ground water identified above be available for allocation, the allowed average annual amount of withdrawal from the Aquifer that could be allocated from beneath the Overlying Land would be 8.16 acre-feet per year.
9. A review of the records in the Office of the State Engineer has disclosed that none of the Underlying Ground Water in the Aquifer beneath the Overlying Land has been previously allocated or permitted for withdrawal.
10. Pursuant to Section 37-90-107(7)(c)(III), C.R.S., an approved determination of water right shall be considered a final determination of the amount of ground water so determined; except that the Commission shall retain jurisdiction for subsequent adjustment of such amount to conform to the actual local aquifer characteristics from adequate information obtained from well drilling or test holes.
11. The ability of wells permitted to withdraw the authorized amount of water from this non-renewable Aquifer may be less than the one hundred years upon which the amount of water in the Aquifer is allocated, due to anticipated water level declines.
12. In accordance with site specific information, as allowed by Rule 5.3.6.1 of the Designated Basin Rules, it has been determined that withdrawal of ground water from the Aquifer underlying the land claimed by the Applicant will, within one hundred years, deplete the flow of a natural stream or its alluvial aquifer at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal and, therefore, the Underlying Ground Water is considered to be not-nontributary ground water. Also, the location of the land claimed by the Applicant is closer than one mile from the Aquifer contact with the alluvium. Withdrawal of water from the Aquifer underlying the claimed land area would impact the alluvial aquifer(s) of Black Squirrel Creek Creek or its tributaries, which has been determined to be over-appropriated. Commission approval of a replacement plan pursuant to Section 37-90-107.5, C.R.S. and Rule 5.6 of the designated Basin Rules, providing for the actual depletion of the alluvial aquifer and adequate to prevent any material injury to existing water rights, is required prior to approval of well permits for wells to be located on this land area to withdraw the Underlying Ground Water from the Aquifer.
13. On January 12, 2018, in accordance with Rule 9.1 of the Designated Basin Rules, a letter was sent to the Upper Black Squirrel Creek Ground Water Management District requesting written recommendations concerning this application. No written recommendations from the district were received.
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 May 24, 2018 and May 31, 2018. No objections to the application were received within the time limit set by statute.

ORDER

In accordance with Section 37-90-107(7), C.R.S., and the Designated Basin Rules, the Colorado Ground Water Commission orders that the application for determination of right to designated ground water in the Denver Aquifer underlying 40 acres of land, generally described as the SE 1/4 of the NE 1/4, Section 33, Township 13 South, Range 64 West, Sixth P.M., further described in Exhibit A, is approved subject to the following conditions:

15. The allowed average annual amount of withdrawal of Underlying Ground Water from the Aquifer shall not exceed 8.16 acre-feet.
16. The total volume of Underlying Ground Water that may be withdrawn from the Aquifer pursuant to this Determination of Water Right shall not exceed 816 acre-feet.
17. The Commission may adjust the total volume and the allowed average annual amount of withdrawal of Underlying Ground Water that may be withdrawn from the Aquifer to conform to actual Aquifer characteristics based on analysis of geophysical logs or other site-specific data if such analysis indicates that the initial estimate of the amount of Underlying Ground Water in the Aquifer was incorrect.
18. The allowed maximum annual amount of withdrawal may exceed the allowed average annual amount of withdrawal as long as the total volume of Underlying Ground Water withdrawn does not exceed the product of the number of years since the date of approval of this determination times the allowed average annual amount of withdrawal.
19. 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.
20. 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 that allow the withdraw of the Underlying Ground Water.
21. The use of the allowed amount of Underlying Ground Water from this allocation shall be limited to the following beneficial uses: residential, lawn and garden irrigation, the watering of domestic animals and replacement. The place of use shall be limited to the above described 40 acres of Overlying Land. The ground water 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. The ground water right determined herein is located within the Upper Black Squirrel Creek Ground Water Management District where local District rules apply which may further limit the withdrawal and use of the subject designated ground water.
22. Approval of this determination meets the requirements of Section 37-90-107(7)(d)(II) that requires a determination of ground water be made prior to the granting of a well permit pursuant to Section 37-90-107(7).

23. Wells withdrawing the allowed amount of Underlying Ground Water allocated herein are subject to the following conditions:
 - a. The wells must be located on the above described 40 acres of Overlying Land.
 - b. 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.
 - c. The wells must be constructed to withdraw water from only the Denver Aquifer.
 - d. The entire depth of each well must be geophysically logged prior to installing the casing as set forth in Rule 9 of the Statewide Nontributary Ground Water Rules, 2 CCR 402-7.
 - e. 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 and the Upper Black Squirrel Creek Ground Water Management District upon request.
 - f. 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.
24. A copy of this Findings and Order 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 40 acres of Overlying Land area, or any part thereof, shall reveal the existence of this determination.
25. The ground water right determined herein is a vested property right with specific ownership. The ground 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 of Water Right number, the specific aquifer, and the annual volume (based on a 100-year aquifer life) or total volume of ground water that is being conveyed.

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Applicant: Home Run Restorations Inc.

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Dated this 2nd day of July, 2018.

By: 

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



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

Prepared by: aat
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**COLORADO GROUNDWATER COMMISSION
FINDINGS AND ORDER**

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

REPLACEMENT PLAN - DETERMINATION OF WATER RIGHT NO. 3542-BD

AQUIFER: DENVER

APPLICANT: HOME RUN RESTORATIONS, INC.

In compliance with section 37-90-107.5, C.R.S. and the Designated Basin Rules, 2 CCR 410-1 (“Rules” or “Rule”), Home Run Restorations, Inc. (“Applicant”) submitted an application for a replacement plan to allow the withdrawal of groundwater from the Denver Aquifer that has been allocated by Determination of Water Right No. 3542-BD.

FINDINGS

1. Pursuant to section 37-90-107(7), in a Findings and Order dated July 2, 2018, the Groundwater Commission (“Commission”) approved a Determination of a Right to an Allocation of Groundwater, No. 3542-BD, from the Denver Aquifer (“Aquifer”), summarized as follows.
 - a. The determination quantified an amount of water from beneath 40 acres of overlying land generally described as the SE 1/4 of the NE 1/4, section 33, Township 13 South, Range 64 West, Sixth P.M., in El Paso County.
 - b. The amount of water in the aquifer that was allocated was 816 acre-feet.
 - c. The allowed average annual amount of groundwater to be withdrawn from the aquifer was limited to 8.16 acre-feet per year.
 - d. The use of groundwater is limited to the following beneficial uses: residential, lawn and garden irrigation, the watering of domestic animals, and replacement. The place of use is limited to the above described 40 acres of overlying land.
 - e. In accordance with Rule 5.3.6 the 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 Upper Black Squirrel Creek Designated Groundwater Basin and the Upper Black Squirrel Creek Groundwater Management District. 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 Upper Black Squirrel Creek Designated Groundwater Basin, which, according to Rule 5.2.6.2, has been determined to be over appropriated. Such depletion would unreasonably impair existing

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large capacity alluvial rights withdrawing water from that alluvial aquifer.

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 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 20, 2019.
7. The Applicant proposes to divert 1.82 acre-feet annually from the Denver Aquifer for a period of 300 years. The Denver aquifer water will be withdrawn through on lot wells to be located on four residential lots. Each Denver Aquifer well is proposed to divert 0.455 acre-feet of water annually for use in one single family residence, irrigation of lawn, garden, and trees, and watering of domestic animals.
8. At a continuous withdrawal of 1.82 acre-feet annually for 300 years, depletions to the alluvial aquifer system of the Upper Black Squirrel Creek Designated Groundwater Basin would steadily increase to 0.866 acre-feet per year in the 300th year, which is equal to 47.6% of pumping, as shown in Exhibit A.
9. The Applicant proposes to provide 0.9 acre-feet per year of replacement water to the alluvial aquifer system of the Upper Black Squirrel Creek 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 estimated amount acceptable to the Commission), the return flow per lot would be 0.225 acre-feet annually, and the return flows under the plan will total 0.9 acre-feet per year for all four lots at full build out.
10. The subject property is located within the drainage of Black Squirrel Creek, and the return flows will flow to the alluvial aquifer of the Upper Black Squirrel Creek Designated Groundwater 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.

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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. 3542-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. 3542-BD, and such water is legally available for use pursuant to this plan.
16. In accordance with Rule 5.6.4 the application was referred to the Upper Black Squirrel Creek Groundwater Management District on May 14, 2020. Written recommendations from the District were received on June 19, 2020.
17. In accordance with sections 37-90-107.5 and 37-90-112, the application was published in the Ranchland News newspaper on May 21, 2020 and May 28, 2020. No objections to the application were received within the time limit set by statute.
18. 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.
19. 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, finds that the requirements have been meet, and the plan may be approved to allow diversions from the Denver 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 Groundwater Commission orders that the application for a replacement plan to allow the withdrawal of groundwater from the Denver Aquifer underlying 40 acres that are the subject of Determination of Water Right no. 3542-BD is approved subject to the following conditions:

20. The Denver Aquifer water will be withdrawn through four on lot wells to be located on four residential lots. The allowed use of groundwater for each well under this plan is use in one single family residence; irrigation of lawn, garden, and trees; and watering of large domestic animals.
21. The allowed annual amount of groundwater to be withdrawn from the aquifer by all wells operating under this plan shall not exceed 1.82 acre-feet. The allowed annual amount of water to be withdrawn from each on-lot well shall not exceed 0.455 acre-feet.
22. A totalizing flow meter shall be installed on each well. The well owners shall maintain the meters 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 and the Upper Black Squirrel Creek Groundwater Management District upon request.
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

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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 40 acres of overlying land that are the subject of Determination of Water Right No. 3542-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, the number of wells serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system must be equal to or greater than the number of wells shown in Table 1 below, or 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.

Table 1

Year	No. of Wells	Return Flow (af/yr)
1 - 54	1	0.225
55- 103	2	0.450
104- 180	3	0.675
181 - 300	4	0.900

30. 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 and the Upper Black Squirrel Creek Groundwater Management District on forms acceptable to the Commission, on an annual basis for the previous calendar year, by February 15th of the following year.
 - a. Identification of 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 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.

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- e. Any other information the Commission deems relevant and necessary to operation, monitoring, accounting, or administration of the plan.
31. 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.
32. 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.
33. 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.
34. All terms and conditions of Determination of Water Right No. 3542-BD must be met.
35. 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 2nd day of July, 2020.



Kevin G. Rein, P.E.
Executive Director
Colorado Groundwater Commission

By: 

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