

**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.: 2350-BD

AQUIFER: DENVER

APPLICANT: STEPHEN COOK

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

FINDINGS

1. The application was received complete by the Colorado Ground Water Commission on May 7, 2009.
2. The applicant requests a determination of right to designated ground water in the Denver Aquifer (hereinafter "aquifer") underlying 155 acres, generally described as the SE1/4 of Section 27, except the W1/2 of the SW1/4 of the SE1/4 of Section 27, Township 12 South, Range 63 West of the 6th Principal Meridian, in El Paso County. According to a signed statement dated April 29, 2009, attached hereto as Exhibit A, the applicant owns the 155 acres of land, which are further described in said affidavit (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.
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: domestic, commercial, industrial, irrigation, stock watering and replacement supply. The applicant's proposed place of use of the underlying ground water is the above described 155 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 155 acres of overlying land claimed by the applicant is 5010 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.
 - 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 190 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 5010 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 Rule 5.3.6 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 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 October 14, 2009, 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 November 26, 2009 and December 3, 2009. 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 155 acres of land, generally described as the SE1/4 of Section 27, except the W1/2 of the SW1/4 of the SE1/4 of Section 27, Township 12 South, Range 63 West of the 6th Principal Meridian, 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 50.1 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 5010 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 underlying ground water from this allocation shall be limited to the following beneficial uses: domestic, commercial, industrial, irrigation, stock watering and replacement supply. The place of use shall be limited to the above described 155 acres of overlying land.

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 underlying ground water allocated herein are subject to the following conditions:
 - a. The wells must be located on the above described 155 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 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 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 155 acres of overlying land area, or any part thereof, shall reveal the existence of this determination.
25. The underlying ground water right determined herein is a vested property right with specific ownership. The underlying 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 underlying ground water that is being conveyed.

Determination No.: 2350-BD
Aquifer: Denver
Applicant: Stephen Cook

Page 5

Dated this 29th day of January, 2010.



Dick Wolfe, P.E.
Executive Director
Colorado Ground Water Commission

By: 

Keith Vander Horst, P.E.
Supervisor, Designated Basins Team

Prepared by: JPF
F&O2350-BD.doc

RECEIVED

MAY 07 2009

WATER RESOURCES
STATE ENGINEER
COLOSTATE OF COLORADO
OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCESNONTRIBUTARY GROUND WATER LANDOWNERSHIP STATEMENTI (we) Stephen Cook

(Name)

claim and say that I (we) am (are) the owner(s) of the following described property consisting of 155 acres in the County of El Paso, State of Colorado:The Southeast Quarter, Section 27, Township 12 South, Range 63 West, except for the 5 acres in theW-1/2 of the Southwest Quarter of the Southwest Quarter of the Southeast Quarter of said Section.and, that the ground water sought to be withdrawn from the Denver aquifer underlying the above-described land has not been conveyed or reserved to another, nor has consent been given to it's withdrawal by another.

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

Steve Cook4-29-09
(Date)

(Date)

INSTRUCTIONS:

Please type or print neatly in black ink. This form may be reproduced by photocopy or word processing means. See additional instructions on back.