

EL PASO COUNTY



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VR-18-2 Dancing Wolf Estates IV
 Vacation and Replat

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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by David and Alyce McElhoes ("Applicant") for vacation and replat of lots within Dancing Wolf Estates and Dancing Wolf Estates III into 6 residential lots and 1 commercial lot on a total of approximately 25 +/- acres (the "Property"). Specifically, Applicant intends to replat Lots 1, 2, and 3 of Dancing Wolf Estates into 1 commercial lot and 3 residential lots and to replat Lots 1 and 2 of Dancing Wolf Estates III into 3 residential lots. The property is zoned PUD ("Planned Unit Development").

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the residential water demand is 0.35 acre-feet for each lot for household use, plus an additional 1.02 acre-feet total for irrigation and 0.30 acre-feet total for stock watering, resulting in a per-lot demand of 0.57 acre-feet/year and a total demand of 3.42 acre-feet/year for the residential lots. The water demand for the 1 commercial lot is 2.8 acre-feet/year. Based on this total demand, Applicant must be able to provide a supply of 1,866 acre-feet of water (6.22 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from individual on-lot wells, as provided in the following decrees issued by the Colorado Division 1 Water Court: Case No. 1994CW198, 1999CW065, and 2018CW3006. In Case No. 94CW198, the Court decreed water in the following amounts for the benefit of Applicant's predecessor in title:

Aquifer	Total Decreed Amount	Annual amount (100 years)	Annual amount (300 Years) ¹
Dawson	3510 AF	35.1 AF	11.7 AF
Denver	3790 AF	37.9 AF	12.63 AF
Arapahoe	1600 AF	16.0 AF	5.33 AF
Laramie-Fox Hills	1180 AF	11.8 AF	3.93 AF

The Court also approved an augmentation plan for the withdrawal of 12 AF/year for 100 years (equating to 4 AF/year for 300 years), for a total of 1200 AF, of water from the Dawson aquifer, to be used to serve up to 7 residential lots (equating to 0.57 AF/year/lot for 300 years). During pumping, depletions must be replaced with return flows from septic systems. The Court required the reservation of 20 AF of Arapahoe water and 1180 AF of Laramie-Fox Hills water to replace post-pumping depletions.

4. In 1997 and 1999, Applicant conveyed Lots 6 and 7, Dancing Wolf Estates to a third party. In 2000, Applicant conveyed Lot 3, Dancing Wolf Estates II to a third party. These lots are not part of this vacation and replat. While no water was explicitly conveyed in connection with the lots, the covenants grant each lot the right to withdraw 0.57 AF/year of Dawson water. Presuming that the intent was to meet the County's 300-year water supply requirement, it is assumed for the purposes of this review that these 3 lots will each use 171 acre-feet, for a total of 513 acre-feet of Dawson water unavailable to supply the current vacation and replat.

Furthermore, in 1999, 20 AF of Arapahoe water and 1180 of Laramie-Fox Hills water were conveyed to the Dancing Wolf Estates HOA for post-pumping depletions under 94CW198.

5. The augmentation plan approved by the Court in Case No. 99CW065 was later amended in 18CW3006. The combined result of these two decrees was two-fold. First, an augmentation plan for the withdrawal of 690 AF of Denver water (2.3 AF/year for 300 years) for commercial use was approved. During pumping, depletions must be replaced with return flows from septic systems. The Court required the reservation of 692 AF of Arapahoe water to replace post-pumping depletions. Second, an augmentation plan for the withdrawal of 888 AF of Dawson water (2.96 AF/year for 300 years) was approved for a) 2 residential lots at 0.57 AF/lot/year PLUS b) commercial use at 1.82 AF/year OR 0.68 AF/year for commercial and 2 more residential lots at 0.57 AF/lot/year. During pumping, depletions must be replaced with return flows from septic systems. The Court required the reservation of 888 AF of Arapahoe water to replace post-pumping depletions.

6. The total amount of water legally available to applicant for this vacation and replat thus appears to be:

- Residential: 1029 – 1371 AF Dawson (3.43-4.57 AF/year for 300 years)
- Commercial: 690 AF Denver + (204-546) AF Dawson = total 894-1236 AF (2.98-4.12 AF/year for 300 years)

¹ As calculated by County Attorney's Office

State Engineer's Office Opinion

7. In a letter dated May 18, 2021, the State Engineer reviewed the submittal to replat Dancing Wolf Estates and Dancing Wolf Estates III into a total of 7 lots (6 residential and 1 commercial). The State Engineer referred to the water supply plan from Eric K. Trout dated March 30, 2021 ("Water Supply Plan") which identified the water supply and augmentation plans in the cases referenced above.

The below table is a synopsis of the water supply and demand as summarized in the Water Supply Plan and by the State Engineer:

Case No.	Aquifer	Annual Amount decreed per year (300 years)	Annual Withdrawal permitted per year - Augmentation Plan (300 years)	Annual water needed to meet demand
94CW198	Dawson (NNT)	4.0 acre-feet	0.57 acre-feet/lot (for up to 7 residential lots)	2.28 AF²
99CW065	Denver (NNT)	2.3 acre-feet	2.3 acre-feet Commercial	2.3 AF
18CW3006	Dawson (NNT)	2.96 acre-feet	2.96 acre-feet Commercial & 2-4 residential lots	0.5 AF comm. 1.14 AF resid.
Total				6.22 acre-feet

As described by the State Engineer, the identified water demand is 0.57 acre-feet/year for each residential lot and 2.8 acre-feet/year for the commercial lot, for a period of 300 years. The State Engineer's Office stated that the "proposed water source is individual on lot wells constructed in the Dawson or Denver aquifers³ operating pursuant to the decreed augmentation plans in Division 1 Water Court Case nos. 94CW198, 99CW065 and 18CW3006." The State Engineer further notes that "two of the proposed residential lots will be [served by] existing Dawson aquifer wells permitted under well permit nos. 78470-F and 60477-F. The remaining proposed residential lots will be served by proposed individual on lot wells to be constructed into the Dawson aquifer. The applicant states that there are existing wells on the property with well permit nos. 46995-F, 52988-F, 60477-F, 78470-F. These wells, in addition to the well constructed under permit no. 50391-F in filings 1-4 of Dancing Wolf Estates, are constructed in the Dawson aquifer and operate pursuant to the decreed augmentation plan in Division 1 Water Court Case no. 94CW198 and may withdraw 0.57 acre-foot/year for in house use in one single family dwelling, animal watering and lawn and garden irrigation. The number of animals that can be watered and allowed irrigation varies based on the terms and conditions of the well permits. The decreed augmentation plan in Division 1 Water Court Case no. 94CW198 allows

² Though not discussed in either the Water Supply Plan or the SEO Opinion, this figure represents the amount of Dawson water available under 94CW198 after the conveyance of water to the 3 lots identified in paragraph 4 above.

³ Note: All water supply for the 6 residential lots will be supplied by the Dawson aquifer and water supply for the commercial lot will be a combination of Dawson and Denver aquifers.

for the annual withdrawal of 12 acre-feet from the not nontributary Dawson aquifer for seven individual lots, based on 100 year allocation approach. For a 300 year allocation approach the annual withdrawal would be limited to 4 acre-feet (0.57 acre-foot per lot).”

The State Engineer summed up the water supply by noting the augmentation plans described above that “could allow 9 – 11 residential lots in Dancing Wolf Estates filings 1 – 4 to be served by Dawson aquifer wells (seven lots pursuant to Court Case No. 94CW198 and two - four lots pursuant to 18CW3006) to withdraw 0.57 acre-feet/year per lot and the commercial lot could withdraw a total of 2.98 – 4.12 acre-feet/year (2.3 care-feet/year from Denver aquifer water operating pursuant to case no. 99CW065 and 0.68 – 1.82 acre-feet/year from the Dawson aquifer operating pursuant to case no. 18CW3006).”

The State Engineer stated that the “[b]ased upon the above and pursuant to Section 30-28-136(1)(h)(I), it is our opinion that proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

Recommended Findings

8. Quantity and Dependability. Applicant’s water demand for the Dancing Wolf Estates IV vacation and replat is 6.22 acre-feet per year from the Dawson and Denver aquifers for a total demand of 1,866 acre-feet for the subdivision for 300 years.

- The demand for the 6 residential lots can be met by the remaining 684 AF (2.28 AF/year) of Dawson aquifer water authorized for withdrawal in Case No. 94CW198 and 342 AF (1.14 AF/year) of the Dawson aquifer water authorized for withdrawal in Case No. 18CW3006.
- Case Nos. 99CW065 and 18CW3006 authorize withdrawal of at least 894 acre-feet from the Dawson and Denver aquifers for commercial use (2.98 acre-feet/year), which exceeds the demand of 2.8 acre-feet/year for the commercial lot.

Based on the water demand of 1,866 acre-feet/year for the vacation and replat and the augmentation plans permitting withdrawals in excess of that amount, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for Dancing Wolf Estates IV.

9. Quality. The water quality requirements of Section 8.4.7.B.10.g., of the Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

10. Basis. The County Attorney’s Office reviewed the following documents in preparing this review: the Water Supply Information Summary provided July 25, 2021, the Water Supply Report dated March 30, 2021, the State Engineer Office’s Opinion dated May 18, 2021, and the decrees and augmentation plans in Court Case Nos. 94CW198, 99CW065, and 2018CW3006. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be***

found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and 18CW3006. Water use shall not exceed 0.57 acre-feet/lot/year for each of the 6 residential lots in the subdivision and 2.8 acre-feet/year for the commercial lot. All stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years pursuant to the Court's approved augmentation plans.

B. The County requires that when there is a plan for augmentation, Applicant create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water decrees and augmentation plans for the property.

C. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and 2018CW3006, as well as their obligations to comply with the plans for augmentation in the respective cases.

The covenants shall specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 684 acre-feet of not nontributary Dawson aquifer water pursuant to Court Case No. 94CW198, 492 acre-feet of Dawson aquifer water pursuant to Court Case No. 18CW3006, and 690 acre-feet of not nontributary Denver aquifer water to satisfy El Paso County's 300-year water supply requirement for the 7 lots of the Dancing Wolf Estates IV vacation and replat. The Covenants shall further identify that 171 acre-feet (0.57 AF/year) of Dawson aquifer water is allocated to each residential lot, that 150 acre-feet (0.5 AF/year) of Dawson aquifer water is allocated to the commercial lot, and that 690 acre-feet (2.3 AF/year) of Denver aquifer is allocated to the commercial lot.

2) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson or Denver wells in a manner to replace depletions during pumping and the cost of drilling Laramie-Fox Hills or Arapahoe aquifer wells in the future to replace post-pumping depletions.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use a non-evaporative septic system to ensure

that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants more specifically shall require that each residential lot served by a Dawson aquifer well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose."

4) Address future lot conveyances. The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance by Applicant/Declarant:

"The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to explicitly convey the water rights, such water rights shall be deemed intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the plan for augmentation in Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and 2018CW3006 and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

5) Advise of monitoring requirements. The Covenants shall advise lot owners and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from existing or future wells in the Dawson and Denver aquifers and future wells which may be constructed in the Laramie-Fox Hills and Arapahoe aquifers.

6) Address amendments to the covenants. The Covenants shall address amendments using the following or similar language:

"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 for the Dancing Wolf Estates IV vacation and replat and pursuant to the plans for augmentation in Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and

18CW3006. Further, written approval of any such proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant to a Decree from the Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication."

7) Address termination of the covenants. The Covenants shall address termination using the following or similar language:

"These Covenants shall not terminate unless the requirements of the plans for augmentation in Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and 18CW3006 are also terminated by order of the Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County."

D. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property Dawson aquifer water in the decreed amount of at least 0.57 acre-feet annually per residential lot and 2.3 acre-feet annually for the commercial lot, and the decreed amount of at least 0.5 acre-feet annually for the commercial lot, equating to 6.22 acre-feet annually for the subdivision for a period of 300 years, for a total of 1,866 acre-feet for the 7-lot subdivision. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Dawson and Denver aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson or Denver aquifer underlying the respective lots pursuant to Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and 2018CW3006 to satisfy El Paso County's 300-year water supply requirement. Sufficient water rights are 171.0 acre-feet from the Dawson aquifer (0.57 acre-feet/year x 300 years) for each of the residential lots, and a total of 840 acre-feet for the commercial lot, which equates to 690 acre-feet from the Denver aquifer (2.3 acre-feet/year) and 150 acre-feet from the Dawson aquifer (0.5 acre-feet/year).

Any and all conveyance instruments shall also recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson and/or Denver aquifer): "These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each of the 7 lots of the Dancing Wolf Estates IV vacation and replat. The water rights so conveyed and the return flows therefrom shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in

whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

F. 20 acre-feet of water in the Arapahoe aquifer and 1,180 acre-feet of water in the Laramie-Fox Hills aquifer reserved pursuant to Case No 94CW918 have already been conveyed to the HOA or use in the augmentation plan to replace post-pumping depletions. Applicant and its successor and assigns shall reserve in the Covenants and in any deeds of the Property an additional 692 acre-feet of water in the Arapahoe aquifer from Case No. 99CW065 for the commercial lot and an additional 888 acre-feet of water in the Arapahoe aquifer from Case No. 2018CW3006 for the commercial and residential lots. Pursuant to the augmentation plans, Applicant shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply. Applicant shall convey by recorded warranty deed these reserved Arapahoe and Laramie-Fox Hills aquifer water rights to the HOA or to the individual lot owners (with appropriate deed restrictions) for use in the augmentation plan.

G. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions and Restrictions, form deeds, and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declaration shall cross-reference Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and 2018CW3006 and shall identify the obligations of the individual lot owners thereunder.

H. Applicant and its successors and assigns shall record all applicable documents, including, but not limited to, the decrees in Colorado Water Division 1 Court Case Nos. 94CW198, 99CW065, and 2018CW3006, agreements, assignments, and warranty deeds regarding the water rights and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

I. As noted by the State Engineer's Office, applications for well permits submitted by persons other than the Applicants must include evidence that the permittee has acquired the right to the portion of the water being requested.

J. The following plat note shall be added that addresses the State Engineer's admonition to advise landowners of potential limited water supplies in the Denver Basin:

“Water in the Denver Basin aquifers is allocated based on a 100-year aquifer life; however, for El Paso County planning purposes, water in the Denver Basin aquifers is evaluated based on a 300-year aquifer life. Applicants and all future owners in the subdivision should be aware that the economic life of a water supply based on wells in a given Denver Basin aquifer may be less than either the 100 years or 300 years used for

allocation indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.”

K. Prior to recording the final plat, Applicant shall upload into eDARP an updated Water Supply Information Summary that:

- corrects the Name of Existing Parcel in Section 3 as Recorded to “Lots 1, 2, and 3, Dancing Wolf Estates and Lots 1 and 2, Dancing Wolf Estates III”
- checks “Yes” in Section 6.B and describes the previous action as “Dancing Wolf Estates and Dancing Wolf Estates III”
- checks New Wells in Section 10 and checks the aquifers into which new wells will be drilled
- lists the Water Court Decree Case Numbers in Section 10

cc: Nina Ruiz, Planning Manager