

## **Restrictive Covenants in Ref. to Augmentation Plan and Decree in Div. 2 Case No. 2000CW99 for the Renehan Ranch Subdivision**

### **REQUIREMENTS:**

- A. Each Renehan Ranch Lot Owner and its successors and assigns must comply with all requirements of the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 2000CW99, specifically, that water withdrawn from the Dawson aquifer by each of the proposed wells permitted shall not exceed 0.8 annual acre-feet per well, based on a total combined annual withdrawal of 3.2 acre-feet. Depletions during pumping shall be replaced by individual on-lot non-evaporative septic systems.
- B. The Covenants reserve 720 acre-feet of Dawson aquifer water and 720 acre-feet of Laramie-Fox Hills aquifer water pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 2000CW99 to satisfy El Paso County's 300-year water supply requirement for the three (3) lots of the Renehan Subdivision. The Covenants shall further identify that 240 acre-feet (0.8 acre-feet/year) of Dawson aquifer water and 240 acre-feet of Laramie-Fox Hills aquifer water is allocated to each lot. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water and replacement supply.
- C. The Covenants advise each lot owner and their successors and assigns of their sole financial obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Laramie-Fox Hills aquifer wells in the future to replace post-pumping depletions.
- D. The Covenants 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 and said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants shall also 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.
- E. The water rights referenced herein will be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 00CW99 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.

- F. The Covenants advise the future lot owners of this subdivision and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from existing and future wells in the Dawson and/or Laramie-Fox Hills aquifers.
- G. The Covenants require that well permits be obtained pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 00CW99 and C.R.S. § 37-90-137(4) and (10).
- H. 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 Renehan Subdivision pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 00CW99. 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 the Division 2 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 determination.
- I. These Covenants shall not terminate unless the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in Division 2 Case No. 00CW99 are also terminated by the Division 2 Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.
- J. Each Renehan Ranch Lot Owner and its successors and assigns shall reserve in any deeds of the property Dawson aquifer water in the decreed amount of 720 acre-feet, as well as 720 acre-feet of Laramie-Fox Hills aquifer water. 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.
- K. Each Renehan Ranch Lot Owner and its successors and assigns shall convey by recorded special warranty deed these reserved Dawson aquifer water rights at transfer of lot ownership. Specifically, each Renehan Ranch Lot Owner and future lot owners shall convey sufficient water rights, i.e. 240 acre-feet per lot, in the Dawson aquifer underlying the respective lots to satisfy El Paso County's 300-year water supply requirement. Any and all conveyance instruments shall also recite as follows:
  - a. These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year water supply, and replacement during pumping, for each of the lots of Renehan Ranch Subdivision. 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.

- L. 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. Each Renehan Ranch Lot Owner 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.