

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY
CIVIL DIVISION

Assistant County Attorneys

John N. Franklin
M. Cole Emmons
Lori L. Seago
Andrew Gorgey

Jay A. Lauer, County Attorney

September 10, 2007

SP-07-014 Prairie Ridge
SF-07-016 (Preliminary Plan/Final Plat)

Reviewed by: M. Cole Emmons, Assistant County Attorney
 Kristine Beatty, Paralegal

1. This is a proposal by K & C Rushing, L.L.P. to subdivide 40.67 acres into 7 lots. The property is zoned RR-5.

2. The Applicant provided for the source of water to be from individual on-lot wells withdrawing from the Dawson Aquifer. The Applicant estimates its annual water requirements for household use at 2.1 acre-feet, watering of large domesticated animals at .154 acre-feet, and "other" at 4.746 acre-feet, resulting in a total of 7.0 acre-feet, or 1.0 acre-foot per lot. Applicant will have to be able to provide a supply of 2,100 acre-feet of water (7.0 ac.ft./yr. x 300 yrs.) to meet the County's 300 year water supply requirement.

3. In a letter dated August 6, 2007, the State Engineer indicates that the Applicant was issued a Water Court Decree, Case Nos. 06 CW 100, (Div. No. 1) and 06 CW 20 (Div. No. 2), approving an augmentation plan, which allows for an annual amount of withdrawal of 21 acre-feet (7.0 acre-feet – 300 years). The Engineer is of the opinion that this amount is sufficient to meet the County's 300 year aquifer life requirement. The Engineer indicates that this amount will annually serve in-house use at 0.3 acre-feet, irrigation of lawn and gardens at 0.04 acre-feet, watering of livestock at 0.011 acre-feet, hot tubs at 0.004 acre-feet and swimming pools at 0.025 acre-feet. The Engineer indicates that the Applicant will need to specify the "other" uses when the property owners obtain their well permits. Pursuant to C.R.S. §30-28-136(1)(h)(I), the State Engineer is of the opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.

4. The water quality requirements of Section 49.5 E of the Land Development Code must be satisfied.

5. The Water Court approved the Judgment and Decree for Water Rights/Augmentation Plan, Case Nos. 06 CW 100, (Div. No. 1) and 06 CW 20 (Div. No. 2). The Court ruled that no vested water right or decreed conditional water right will be injured or injuriously affected by operation of the plan for augmentation as decreed.

27 E. VERMILIO AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

6. Analysis. The Court decreed a total annual amount of 36.6 acre-feet from the Dawson Aquifer, 33.8 acre-feet from the Denver Aquifer, 17.6 acre-feet from the Arapahoe Aquifer, and 12.5 acre-feet from the Laramie-Fox Hills Aquifer. The Decree requires Applicant to reserve 1,910 acre-feet from the Denver Aquifer for replacing post-pumping depletions. The Applicant is required to have a 2,100 acre-feet supply to meet the County's 300 year aquifer life requirement. While there is 3,659 acre-feet available in the Dawson Aquifer, the plan for augmentation limits withdrawal to 2,100 acre-feet. There appears to be a sufficient supply to meet the County's 300 year water supply rule.

7. Therefore, at this time, based on the finding of no injury and sufficiency by the State Engineer's Office, the decreed water rights in Case Nos. 06 CW 100, (Div. No. 1) and 06 CW 20 (Div. No. 2) and, on the requirements listed below, the County Attorney's Office recommends a finding that the proposed water supply is sufficient in terms of quantity and dependability. There is a presumption of sufficient water quality.

REQUIREMENTS:

Plat Notes and Documentation are required to address the following:

A. Applicants, their successors and assigns, shall create an HOA and advise the HOA and all future owners of these lots of all applicable requirements of the decrees entered in Case Nos. 06 CW 100, (Div. No. 1) and 06 CW 20 (Div. No. 2), as well as their obligations to comply with the decrees, including, but not limited to, costs of operating the plan for augmentation, which will include construction and pumping of the Denver Aquifer well to replace post-pumping depletions, and includes responsibility for metering and collecting data regarding water withdrawals from wells.

B. Applicant shall assign or convey to the HOA Applicant's interests, rights, and obligations in the plan for augmentation, and create restrictive covenants upon and running with the property which shall obligate individual lot owners and the HOA to carry out the requirements of the plan for augmentation. Applicant shall reserve in the Covenants and/or in any deeds of the property 1,910 acre-feet of water in the Denver Aquifer water for use in the augmentation plan. Said reservation shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for augmentation supply. Such assignment or conveyance shall be accomplished by an appropriate agreement and assignment or conveyance instrument that shall be reviewed and approved by both the Development Services Department and the County Attorney's Office prior to recording of the final plat.

C. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the Dawson Aquifer underlying each lot to satisfy El Paso County's 300 year water supply requirement: 300 acre-feet (1 ac. ft./lot x 300 yrs.). Applicant shall provide a form deed for such conveyance that shall be

reviewed and approved by both the Development Services Department and the County Attorney's Office prior to recording of the final plat.

D. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA to the Development Services Department and the County Attorney's Office for review, and the same shall be approved by the Development Services Department and the County Attorney's Office prior to recording of the final plat approval. Said Declaration shall cross-reference the decreed plan for augmentation, the related water rights decrees, and shall recite the obligations of the individual lot owners and the HOA under each of these documents. Applicant shall provide a copy of the Certificate of Incorporation of the HOA by the Secretary of State to the Development Services Department and the County Attorney's Office.

E. Applicant, its successors and assigns, shall record all applicable documents including, but not limited to, the decreed plan for augmentation in Case Nos. 06 CW 100, (Div. No. 1) and 06 CW 20 (Div. No. 2), agreements, assignments, and warranty deeds regarding the water rights, Declaration of Covenants, By-laws, and Articles of Incorporation in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

F. 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, the Home Owners Association, 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 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."

G. The water rights are decreed in the name of Kenneth I. Rushing and Carol A. Rushing Revocable Trust Under Instrument Dated March 13, 1998. Additional conveyances may be required to create a clear chain of title for the water rights. Applicant shall provide a form warranty deed and any additional warranty deeds that may be required to create a clear chain of title for review and approval to the Development Services Department and the County Attorney's Office prior to recording the final plat.

cc: Raimere Fitzpatrick, Project Manager I