

# EL PASO COUNTY

## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**Diana K. May, County Attorney**

### Assistant County Attorneys

M. Cole Emmons  
Lori L. Seago  
Lisa A. Kirkman  
Steven A. Klaffky  
Mary Ritchie  
Bryan E. Schmid  
Nathan J. Whitney  
Michael J. Desmond  
Christopher M. Strider  
Terry A. Sample

February 28, 2021

SP-19-6 Saddlehorn Ranch Subdivision  
Preliminary Plan

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney  
Edi Anderson, ACP, Paralegal

### **FINDINGS AND CONCLUSIONS:**

1. This is a proposal by the ROI Property Group, LLC ("Applicant"), for a Preliminary Plan to subdivide approximately 816 +/- acres of land (the "Property") into 218 single-family lots, plus open space, wetlands, roads, drainage facilities, and utilities, including a new community central water system. The Property is zoned RR-2.5 (Rural Residential).

2. The water needs for the subdivision will be met through a new community water system which will be operated as a public water system by the Saddlehorn Ranch Metropolitan District Nos. 1-3 (collectively, the "District"). The water supply for the new community water system will derive from the nontributary Arapahoe and Laramie-Fox Hills aquifers, pursuant to Colorado Ground Water Commission Determination Nos. 458-BD (Arapahoe) and 457-BD (Laramie-Fox Hills) ("Determinations"). The Applicant also has water rights available in the Denver aquifer; however, they will not be used in this subdivision so analysis of these water rights will not be provided. Pursuant to the Water Supply Information Summary ("WSIS"), the Applicant estimates its annual water requirements to serve the development at 146.06 acre-feet/year, based on 0.67 acre-feet/year/lot, which includes residential irrigation. The Applicant will need to provide a supply of 43,818 acre-feet of water (146.06 acre-feet/year x 300 years) to meet El Paso County's 300-year water supply requirement.

3. The District provided a Permanent Will-Serve Letter dated September 1, 2020, committing to serve the Saddlehorn Ranch Subdivision that is comprised of "up to

200 S. CASCADE AVENUE  
OFFICE: (719) 520-6485



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

218 residential lots each having a minimum 2-1/2 acre size and based on this assumption the District intends to provide 146.08 acre-feet of water per year to the Property.”

4. The Applicant also provided a *Water Resources & Wastewater Report for Saddlehorn Ranch Subdivision* dated April 2019 and as Revised September 2020 (“*Report*”) detailing the water supply for Saddlehorn Ranch which highlights the provisions of Determination Nos. 457-BD and 458-BD. The Report indicates that based on the Determinations, the currently available on-site ground water legal source is 198.16 acre-feet/year, based on El Paso County’s 300-year requirement; however, as noted elsewhere herein, Applicant does not own the full entitlements in those Determinations. The available water supply is summarized in the Report as follows:

Aquifer	Determination	Tributary Status	Acreage	Available water per acre (100-year)	Annual Allocation (100 years)	Annual Allocation (300 years)
Arapahoe	458-BD	NT	816.5	0.3908	319.09	<b>106.36</b>
Laramie-Fox Hills	457-BD	NT	816.5	0.3373	275.41	<b>91.80</b>
<b>Total Legal Supply</b>					594.49	<b>198.16</b>

The Determinations provided the following beneficial uses for the water supply: domestic, irrigation, commercial, industrial, recreation, and livestock watering. Determination No. 458-BD (Arapahoe aquifer) permitted maximum water withdrawals in the amount of 2,720 acre-feet/year. Determination No. 457-BD (Laramie-Fox Hills aquifer) permitted maximum water withdrawals in the amount of 2,347 acre-feet/year. The two Determinations dated March 3, 2004, were based on a larger parcel of 6,995 acres. The current Property consists of only 8.966% of the land originally included in the Determinations. The table shown above reflects the available water supply based on the current parcel that is the subject of this subdivision project. The *Report* also states that water demand will be met using two wells – one well in the Arapahoe aquifer and one well in the Laramie-Fox Hills aquifer. The existing well permits are identified as follows: Well Permit No. 66938-F (Laramie-Fox Hills) and Well Permit No. 66937-F (Arapahoe). Based on the State Engineer’s review (see Para. 6 below), these wells must be re-permitted.

The *Report* highlighted the chain of title for the water rights and Determination Nos. 457-BD and 458-BD and are summarized as followed:

- a. Robert C. Norris Family Trust – Determination Nos. 457-BD and 458-BD were issued to Robert C. Norris Family Trust on March 3, 2004;
- b. Andre Brandt, Roger Barrack and Scott Smith – Quiet Title Action filed in the 4<sup>th</sup> Judicial District/El Paso County Court on or about January 5, 2018 – Court

issued Order quieting title and adjudicating water rights to Brand/Barrack/Smith on July 2, 2018;

- c. ROI Property Group, LLC – Water rights deeded to ROI via Water Rights Deed dated August 30, 2018.

5. The Applicant's Letter of Intent (as amended January 21, 2021) confirms that the water for the subdivision will be provided by a new central water system which will be operated and maintained by the Saddlehorn Ranch Metropolitan Districts Nos. 1-3. Since this will be a new public water system, Applicant submitted plans to the Colorado Department of Public Health and Environment ("CDPHE") for review and approval. The Applicant submitted its Preliminary Submittal Package for the Technical, Managerial, and Financial (TMF) Capacity, for the Saddlehorn Ranch Metropolitan District dated October 2020, and its Basis of Design Report ("BDR") for construction design on or about October 6, 2020.

6. In a letter dated November 19, 2020, the State Engineer's Office reviewed the submittal to subdivide 816.5 acres into 218 single family lots (the Engineer noted a discrepancy in the number of lots as being 216 as stated in the District's commitment letter; however, this was an earlier version of a commitment letter, and the correct number is 218 lots). The State Engineer detailed the water demand for the subdivision at 146.06 acre-feet/year based on a demand of 0.67 acre-feet/year/lot. The State Engineer noted the water demand identified in the WSIS which indicates "the total estimated water requirement is 130,394 gallons/day or 146.06 acre-feet/year also based on a demand per lot of 0.67 acre-feet/year. The irrigation demand of the residential lots is included in the total demand per lot." The State Engineer stated that the "proposed water supply for this subdivision appears to be the District. According to the submitted information it appears that the water source to be used by the District is the Arapahoe and Laramie-Fox Hills aquifers that is the subject of Determination of Water Rights Nos. 458-BD and 457-BD, respectively, to be provided by a central system. It is unclear if this water has been transferred to the District." The State Engineer further stated that the subdivision lies within the allowed places of use for Determination Nos. 458-BD and 457-BD and that the proposed uses are allowed. Further, "Determination of Water Rights No. 457-BD allows for an average annual diversion of 2,347 acre-feet for a maximum of 100 years and the Determination of Water Right No. 458-BD allows for an annual average diversion of 2,719 acre-feet for a maximum 100 years. According to a Water Rights Deed signed on August 30, 2018 that is contained within Exhibit E of the Water Resources Report the developer owns only 243.83 acre-feet/year of Determination of Water Right no. 458-BD and 210.47 acre-feet/year of Determination of Water Right no. 457-BD."

The State Engineer noted that the "allowed average annual amount of withdrawal of 243.83 acre-feet/year from the Arapahoe aquifer (458-BD) that the developer owns and 210.47 acre-feet/year from the Laramie-Fox Hills aquifer (457-BD) that the developer owns would be reduced to one-third of those amounts, or 81.28 acre-feet/year from the Arapahoe aquifer and 70.16 acre-feet/year from the Laramie-Fox Hills aquifer. As a

result, the water may be withdrawn in those annual amounts for a maximum of 300 years. The proposed annual water supply of 151.44 acre-feet/year<sup>1</sup> (81.28 acre-feet/year from the Arapahoe aquifer plus 70.16 acre-feet/year from the Laramie-Fox Hills aquifer) is more than the estimated annual demand of 146.06 acre-feet/year.”

The State Engineer also described the 2 wells, identified as Well Permit Nos. 66937-F and 66938-F, which are owned by the developer and will be used by the District to supply water to the subdivision. “Well permit no. 66937-F allows for an annual withdrawal of 1,600 acre-feet/year from the Arapahoe aquifer pursuant to Determination of Water Right no. 458-BD, and well permit no. 66938-F allows for an annual withdrawal of 800 acre-feet/year from the Laramie-Fox Hills aquifer pursuant to Determination of Water Right no. 457-BD to be used in the subdivision by the District.” And further, “since the developer does not own the amount of the right for which the permits are issued the developer must obtain new well permits in accordance with Section 37-90-107(7) C.R.S., for the amounts owned and request that permit nos. 66937-F and 66938-F be cancelled.”

The State Engineer also provided the following advisory to the Applicant regarding the proposed storm water detention structure to be constructed as part of the subdivision: “applicant should be aware that, unless the structure can meet the requirements of a “storm water detention and infiltration facility” as defined in Designated Basin Rule 5.11, the structure may be subject to administration by this office.”

Finally, the State Engineer stated that, “pursuant to Sections 30-28-136(1)(h)(II), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to water rights, as long as the District is committed to serving all 218 lots and the water associated with Determination nos. 457-BD and 458-BD, described above, is transferred to the District prior to subdivision approval.” And further, it is their opinion that the “water supply is adequate is based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions.”

7. Colorado Ground Water Commission Determination No. 457-BD. Determination No. 457-BD was issued in the name of the Robert C. Norris Family Trust and adjudicates water rights in the Laramie-Fox Hills aquifer underlying the Property. Determination No. 457-BD allows ground water to be withdrawn from the Laramie-Fox Hills aquifer in an annual amount not to exceed 2,347 acre-feet based on a period of 100 years and based on the original parcel size of 6,955.31 acres. The allocation is limited to the following beneficial uses: domestic, irrigation, commercial, industrial, recreation, and

---

<sup>1</sup> There is a discrepancy in the amount of water supply available identified in Applicant’s documents. The Water Resources Report by JDS-Hydro dated September 2020 identifies the water supply as 198.16 acre-feet/year. The letter incorporated in the Water Resources Report by Michael Browning dated June 27, 2018 indicates a water supply of 151.44 acre-feet/year which amounts were also cited by the State Engineer’s Office. Since both amounts exceed the water demand of 146.06 acre-feet/year required by the subdivision, this review will analyze based on the water supply of 151.44 acre-feet/year.

livestock watering. Based on Designated Basin Rules, no more than 98% of the amount of ground water withdrawn annually may be consumed. As noted by the State Engineer in Para. 6 above, Applicant only owns 210.47 acre-feet annually of the total amount adjudicated in this Determination.

8. Colorado Ground Water Commission Determination No. 458-BD. Determination No. 458-BD was issued in the name of the Robert C. Norris Family Trust and adjudicates water rights in the Arapahoe aquifer underlying the Property. Determination No. 458-BD allows ground water to be withdrawn from the Arapahoe aquifer in an annual amount not to exceed 2,720 acre-feet based on a period of 100 years and based on the original parcel size of 6,955.31 acres. The allocation is limited to the following beneficial uses: domestic, irrigation, commercial, industrial, recreation, and livestock watering. Based on Designated Basin Rules, no more than 98% of the amount of ground water withdrawn annually may be consumed. As noted by the State Engineer in Para. 6 above, Applicant only owns 243.83 acre-feet annually of the total amount adjudicated in this Determination.

9. Analysis—Quantity: Applicant's water demand for the Saddlehorn Ranch Subdivision is 146.06 acre-feet annually using Arapahoe and Laramie-Fox Hills aquifer water allowed under the Determinations for a total demand of 43,818 acre-feet for the subdivision for 300 years. The Determinations (as pro-rated for the current parcel area) authorizes withdrawal of 151.44 acre-feet (81.28 acre-feet of Arapahoe aquifer and 70.16 acre-feet of Laramie-Fox Hills aquifer) of water annually for a minimum of 300 years, which exceeds the water demand of 146.06 acre-feet annually for 300 years. Therefore, there appears to be a sufficient water supply to meet the water demands of this subdivision.

10. Analysis—Dependability: For new central water systems like the one Applicant proposes for this subdivision, the County Attorney's Office has historically relied on CDPHE's review and approval of TMF capacity and final construction plans for the water system in order to make its dependability findings. CDPHE has changed their interpretation of regulations and policies and timing of their TMF review, and as a result, the County Attorney's Office is no longer able to rely on CDPHE's review for dependability findings as it had previously, and has had to modify its approach to dependability findings. See **Exhibit A, CDPHE Regulations, LDC, & Water Dependability**, attached hereto and incorporated herein by this reference, for additional background and information.

The County Attorney's Office, pursuant to negotiations and agreement with the Applicant, has agreed to **Saddlehorn Ranch Restrictive Covenant on Transfer of Title** ("Restrictive Covenant")(set forth and incorporated herein by this reference at **Exhibit B**) to enable a finding of conditional sufficiency as to dependability for the new central water system proposed for this subdivision pursuant to § 8.4.7.B.6.g.vi., LDC. The provisions of the Restrictive Covenant shall constitute Special Conditions for conditional finding of sufficiency as to dependability. Applicant shall comply with the provisions of the

Restrictive Covenant/Special Conditions, and upon completion to the County's satisfaction of the same, the conditional finding of sufficiency as to dependability shall convert to a full sufficiency finding without further action required by the County.

The following information relates to dependability as set forth in § 8.4.7.B.5. & 6.g., and the Restrictive Covenant:

a. Regarding the water supply, Applicant has provided a reliable source of water to serve the subdivision that meets the County's 300 year water supply requirement in terms of quantity, and which the State Engineer's Office finds sufficient (see, Paras. 3, 6, 7, 8, and 9 above).

b. Regarding financial capacity to fund construction of the new central water system, in its TMF documents provided to CDPHE, the Applicant states that "Financial plans and budget projections show that SRMD will issue privately placed debt and market-issued revenue bonds with \$12,324,000 million in net proceeds (after fees and reserve) for water system development." The Saddlehorn Ranch Metropolitan District Nos. 1-3 Service Plan identifies total Infrastructure Capital Costs of \$22,480,550 and Maximum Debt Authorization of \$45,000,000.

c. Regarding water for fire demand: the Applicant's *Water Resources & Waste Water Report* states that according to the "2009 International Fire Code, systems that have structures up to 3,600 square feet and are comprised of certain building materials (such as those proposed in Saddlehorn Ranch), require a minimum fire-flow of 1,500 GPM must be met." In the TMF submittal, the consultant noted the Fire Flow (1,500 GPM \* 120 Minutes) (1,500 GPM \* 120 Minutes) volume demand as 180,000 gallons and noted that the "minimum fire flow capacity is defined as 1,500 gpm for 120 minutes per the International Fire Code (IFC). Controls for the high-capacity pump, along with the smaller distribution pumps, will be integrated into a central SCADA PLC." The Falcon Fire Protection District provided a letter dated October 11, 2018, committing to provide fire suppression, fire prevention, and other related services to the subdivision.

d. Regarding compliance with drinking water regulations, CDPHE issued an "Approval Letter" dated February 4, 2021 (attached hereto at **Exhibit C** and incorporated herein by this reference); however, it does not appear that this letter addresses TMF capacity as the County Attorney's Office has required of Applicant and as required in the Restrictive Covenant/Special Conditions, but rather, only addresses the Basis of Design Report (BDR)—the construction design and plan—submitted by Applicant. Applicant submitted both TMF capacity and BDR to CDPHE on or about October 6, 2020; however, this "Approval Letter" is only for the BDR: "Approval of Drinking Water Final Plans and Specifications for Construction Saddlehorn Ranch Water System." It states CDPHE " ... has received and reviewed the Final Plans and Specifications for the Saddlehorn Ranch Water System in accordance with . . . (Regulation 11). The design meets or exceeds the requirements of the *State of Colorado Design Criteria For Potable Water Systems* (Design

Criteria) and is hereby approved." (Emphasis added). There is no mention of TMF review, and the TMF capacity documents which Applicant submitted are not listed in the "documents reviewed" section at p. 4. The letter states, "[a]pproval is conditional upon submission for Department review of the complete finished water storage tank [and related tank design and drawings]" (see p. 3). Finally, it states, "[a]pproval of this project is based only upon engineering design to provide safe potable water, as required by Regulation 11 ...." Again, there is no conditional approval of TMF capacity.

This "Approval Letter" is not like others CDPHE has issued, i.e., like the one for Sanctuary of Peace Subdivision, which found that both the "... TMF and design has been found to be in conformance with the current requirements of the New Public Water System Capacity Planning Manual and the State of Colorado Design Criteria For Potable Water Systems (Design Criteria)." CDPHE did not include such approval language in its letter for Saddlehorn; therefore, Applicant will have to meet additional Requirements in order for the County Attorney's Office to make its recommendation of conditional sufficiency for water dependability.

e. Regarding well construction, the *Water Resources & Wastewater Report* dated September 2020 notes that domestic water demand will be met using 2 wells – one well in the Arapahoe aquifer and the second well in the Laramie-Fox Hills aquifer and are identified as Well Permit No. 66937-F and Well Permit No. 66938-F. The wells were drilled in approximately 2008 but have not been equipped. The State Engineer's Office notes that the 2 well permits will need to be cancelled and re-permitted (see Para. 6 above). The wells were tested in January and May of 2019 and several adjustments will be made based on the testing results. Applicant's water attorney, Ryan Farr, provided copies of Applications to Re-Permit Well Permit Nos. 66937-F and 66938-F, which he submitted to the Colorado Ground Water Commission on December 17, 2020.

f. Regarding water quality, Applicant states in its TMF submittal that 2 wells, an Arapahoe and a Laramie-Fox Hills well "have been drilled, screened, cased, and tested for this subdivision. Both well completion reports were done in 2008. Saddlehorn Ranch Metropolitan District (SRMD) has sampled both wells for three quarters in 2019. None of the primary constituents that were tested were above their respective Maximum Contaminant Level (MCL). Only Total Dissolved Solids, a secondary standard, was above its MCL. Chlorination and filtration to remove Iron and Manganese are planned for this system. This will likely be accomplished via a pressure-sand filtration. Although filtration is not mandatory, it will be done for water taste and aesthetics." El Paso County Public Health Department submitted comments to EDARP stating that "water quality testing has been completed and the results submitted for review are acceptable; however, the testing laboratory was not identified in the submittal. Please provide the sample submittal forms and copies of the testing laboratory result sheets to El Paso County Public Health."

g. Regarding an operator for the central water system, in its TMF submittal to CDPHE, Applicant's consultant identifies the operator as ORC Water Professional, Inc. and specifically the Certified Treatment Operator is Clyde Penn (Operator ID No. 9835). The TMF submittal stated that "ORC Water Professionals (OWP) maintains licensing adequate to support whatever growth or future treatment system requirements demand."

h. Restrictive Covenant. Applicant, the Planning and Community Development Department, and the County Attorney's Office negotiated and agreed to the terms of the Saddlehorn Ranch Restrictive Covenant on Transfer of Title ("Restrictive Covenant")(attached hereto at **Exhibit B** and incorporated herein by this reference). The provisions of the Restrictive Covenant shall constitute Special Conditions and thus are Requirements that must be completed in exchange for, and are the basis of, the recommendation for **conditional sufficiency** as to water **dependability** herein. The Restrictive Covenant enables the Applicant to obtain building permits, but not certificates of occupancy, for the Initial 15 lots upon approval of the first final plat before the new central water system is constructed. The County's requirement that the water system be completed and TMF and construction design are finally approved by CDPHE before homeowners are allowed to move into any completed house is met by the requirement that deeds for the Initial 15 lots must be placed into escrow with Empire Title and not be released and closed until the water system is completed and CDPHE has finally approved TMF capacity and construction design pursuant to written Escrow Instructions to be agreed to by the County Attorney's Office and Applicant.

11. Recommendation Regarding Quantity. Based on the information provided in the WSIS, the Water Resources Report, the Colorado Ground Water Commission Determination No. 457-BD which permits withdrawal from the Laramie-Fox Hills aquifer in the amount of 70.16 acre-feet/year for a period of 300 years, and Colorado Ground Water Commission Determination No. 458-BD which permits withdrawal from the Arapahoe aquifer in the amount of 81.28 acre-feet/year for a period of 300 years, the State Engineer's finding of sufficiency and no injury to vested water rights, the District's Permanent Will-Serve Commitment Letter, and if CDPHE gives final TMF capacity and construction design approvals of the community water system, and pursuant to the Requirements herein, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of **quantity**.

12. Recommendation Regarding Dependability. Because Applicant has not yet completed construction of the new central water system and because CDPHE has not yet issued its final approval of TMF capacity and final construction plans and will not even begin such final review until there are 15 hookups to the central water system, at this time, based on the information in Paragraph 10 above, and if Applicant meets the requirements set forth in the provisions of the Restrictive Covenant set forth in **Exhibit B**, the County Attorney's Office can only recommend a finding that the proposed water supply is **conditionally sufficient** as to water **dependability**. Once Applicant provides evidence satisfactory to the Planning and Community Development Department and the



County Attorney's Office that Applicant has completed all Requirements set forth herein, plus the requirements set forth in the Restrictive Covenant set forth in **Exhibit B**, the finding of conditional sufficiency as to dependability will convert to a full sufficiency finding as to dependability without further action required by the County.

13. Water Quality. Section 8.4.7(B)(10)(g), of the El Paso County Land Development Code allows for the presumption of acceptable water quality for projects such as this where water is supplied by an existing Community Water Supply operating in conformance with Colorado Primary Drinking Water Regulations unless there is evidence to the contrary.

**REQUIREMENTS:**

A. Applicant shall prepare plat notes as required in the Restrictive Covenant to limit issuance of Building Permits, but not issue Certificates of Occupancy, as set forth in the Restrictive Covenant, and shall provide copies of such plat notes that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the first final plat.

B. Specific Requirements for Conditional Sufficiency as to Dependability for Saddlehorn Ranch Subdivision:

1) TMF Capacity. Pursuant to Para. 10.d., above, prior to recording the first final plat for Saddlehorn Ranch Subdivision, Applicant shall obtain an "Approval Letter" from CDPHE in which CDPHE gives its conditional approval that the TMF capacity conforms to the requirements of the *New Public Water System Capacity Planning Manual*. Alternatively, at the election and subjective discretion of the County Attorney's Office, in consultation with the Planning & Community Development Department, prior to recording the first final plat for Saddlehorn Ranch Subdivision, Applicant shall obtain written clarification from CDPHE that the "Approval Letter" dated February 4, 2021 (as described in Para. 10.d., above) also includes its conditional approval of the TMF capacity.

2) Restrictive Covenant. The provisions of the Restrictive Covenant, attached hereto at **Exhibit B**, shall constitute Special Conditions and are hereby incorporated as if set forth verbatim, and hereby become specific Requirements of the County Attorney's Office that must be completed by Applicant in order to obtain the recommendation for conditional sufficiency as to dependability. If said specific Requirements of the Restrictive Covenant are not completed, the County Attorney's Office may elect to withdraw its recommendation of conditional sufficiency as to dependability.

3) Recording and Plat Note. Upon coordination with the Planning & Community Development Department, Applicant shall record the Restrictive Covenant in

substantially the same form as that attached at **Exhibit B** (including the legal description of the area covered by the preliminary plan), in the records of the El Paso County Clerk and Recorder's Office. Applicant shall place a Note on the first final plat of the subdivision advising homeowners in the Saddlehorn Ranch Subdivision of the limitations set forth in the Restrictive Covenant and referencing the recording information for the same.

C. All requirements set forth by the County Attorney's Office in the Restrictive Covenant noted above and delineated in **Exhibit B** shall be met by the Applicant and the District (as applicable).

D. Applicant and all future owners of lots within this subdivision shall be advised of, and comply with, any conditions, rules, regulations, limitations, and specifications set by the Saddlehorn Ranch Metropolitan District Nos. 1-3, the Restrictive Covenant, and all provisions related to the Colorado Ground Water Commission Determination Nos. 457-BD and 458-BD.

E. Any and all water rights owned by the Applicant pursuant to Colorado Determination of Water Rights No. 457-BD and 458-BD shall be transferred and assigned to the District prior to final subdivision approval. Currently, Applicant has provided copies of deeds that convey water rights from ROI Property Group, LLC to Gorilla Capital CO Saddlehorn Ranch, LLC. Prior to recording the first final plat, Applicant shall provide to both the Planning and Community Development Department and the County Attorney's Office a copy or copies of warranty deed(s) or other instrument(s) acceptable to the County Attorney's Office conveying or assigning water rights to Saddlehorn Ranch Metropolitan District Nos. 1-3 to supply the subdivision.

F. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to Saddlehorn Ranch Restrictive Covenant on Transfer of Title (including legal description of the area encompassed by the preliminary plan of the subdivision), Colorado Ground Water Commission Determination Nos. 457-BD and 458-BD, and agreements, assignments, and warranty deeds regarding the water rights, in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

G. It is the responsibility of the Applicant and the District to comply with any and all conditions set forth by the State Engineer's Office regarding any storm water detention structure on the property pursuant to Designated Basin Rule 5.11.

H. 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. Applicant 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.”

cc. Nina Ruiz, Planning Manager

## EXHIBIT A

### CDPHE REGULATIONS, LDC, & WATER DEPENDABILITY

#### HISTORY

Historically, for new community water systems that will operate as a public water system, the County relied on the Colorado Department of Public Health & Environment's ("CDPHE") review and approval of TMF capacity and final construction plans, which CDPHE would do prior to construction of the new central water system, as evidence that an applicant's water supply would meet sufficiency requirements for dependability required by the Land Development Code ("LDC"). That review and approval would culminate in CDPHE's issuance of a Public Water System Identification ("PWSID") Number, which the County relied on as proof of CDPHE's approval. That approval was required before recording the Final Plat. Applicant could then choose to either provide collateral to guarantee construction of the new water system or agree to restrict sale of lots until the PWSID Number issued and a professional engineer certified that the water system had been completed pursuant to the approved construction plans and was operational. Upon such certification, the County would authorize issuance of building permits.

CDPHE has changed its interpretation of its Regulations and the timing of its review of TMF capacity and final construction plans, as explained in detail below. Briefly, CDPHE now will not provide final review until the water system is constructed and there are at least 15 hookups or regularly serves at least 25 year-round residents, which then means the system meets the definition of a public water system that CDPHE asserts it then has jurisdiction to regulate. The PWSID Number it now issues is simply an identification number for record keeping purposes and no longer has any significance for the County as it did before. Also, recent revisions to the LDC eliminated the ability to restrict sale of lots as a means to condition approval of Final Plats.

#### CDPHE REGULATIONS

As a result of the above, the County has had to develop a new process for evaluating and reaching a sufficiency finding for water dependability for new central water systems given CDPHE's current interpretation and application of Regulation 11, 5 CCR 1002-11. Based on the language in § 11.4(1)(a) & (b), for a new community water system that is a public water system, the supplier cannot begin construction of the new system until CDPHE approves TMF Assessment:

"(a) For new community or non-transient, non-community water systems, the supplier must not begin construction of the new water system until the supplier completes and receives Department approval of a capacity (technical, managerial and financial) assessment using the criteria found in the *New Public Water System Capacity Planning Manual*."

"(b) For all public water systems, the supplier must not begin construction of any new waterworks, make improvements to or modify existing waterworks, or begin using a new source until the supplier submits and receives Department approval of plans and specifications for such construction, improvements, modifications, or use."

The definitions of "community water system" and "public water system" are essentially the same, but "public water system" is more detailed:

“Public water system’ means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water system. . . .”

CDPHE *New Public Water System Capacity Planning Manual* (“Manual”) indicates that TMF must be approved before construction of the water system:

§ 3.1.1 “A new prospective water system may be constructed that will meet the definition of a public water system on the first day of operations. . . .For this scenario, the system can begin operations after:

- the water system has demonstrated TMF capacity,
- the Department has issued design approval in accordance with the State of Colorado Design Criteria for Potable Water Systems,
- and the project engineer certified the system has been constructed according to the design approval and final plans and specifications.

Prior to beginning construction of a new community or NTNC, all requirements of the capacity review must be in place.”

It is difficult to understand how these requirements work in the real world given CDPHE’s current interpretation and application of them. CDPHE has advised County staff that they will not do TMF capacity review and final approval and construction plans approval until the water system meets the definition of a public water system—hookups operational to serve 15 lots; however, the developer cannot get 15 hookups unless the system is constructed. But Regulation 11 says the water system cannot be constructed until TMF and construction design have been approved by CDPHE. As a result, the County is forced to operate in this gray area with CDPHE in which CDPHE advises they will issue an “acknowledgement letter” that says they have received TMF capacity information and construction plans from the developer, but they will not do complete review and final approval until there are 15 hookups. CDPHE suggests that the County withhold certificates of occupancy until the water system has been approved by CDPHE.

The Manual recognizes the above conundrum:

3.7 When Should a TMF capacity assessment be submitted? “Per Regulation 11, a new public water system is required to receive approval of the TMF capacity assessment (reviewed against the requirements within this manual) and new water works plans and specifications (reviewed against the requirements in the design criteria) prior to beginning construction of any new water works or improvements. However, Regulation 11 does not apply to water systems until the water system meets the definition of a public water system, as defined by the regulation. This can create a regulatory paradox for prospective systems. To address this, the department expects that prospective systems will submit TMF capacity assessment six months prior to the

date the system anticipates meeting the definition of a public water system. . . .” (Emphasis added).

The County Attorney’s Office interprets the regulations above, and CDPHE’s interpretation of the same as evidenced by their directions to the County, to indicate they are okay with new central water systems being built, but once there are 15 hookups, no additional hookups can be made until CDPHE completes final review and approval of TMF capacity assessment and construction plans and design. The County Attorney’s Office believes that any request by an applicant to go beyond 15 hookups before the water system is built and CDPHE has issued its final approval of the system as a public water system, including TMF assessment, would violate CDPHE’s Safe Drinking Water regulations, policies and procedures, and by allowing such, the County could be complicit.

#### LDC DEPENDABILITY REQUIREMENTS FOR NEW PUBLIC WATER SYSTEMS

##### LDC 8.4.7.B.4.b. Conditional Finding of Sufficiency

“Conditional findings of sufficiency can be made by the Planning Commission and the BoCC specifying conditions that shall be met prior to recording the final plat. Some examples of conditions include, but are not limited to: . . .completion of CDPHE Technical, Managerial, and Financial TMF) analysis and issuance of PWSID number for a new central water system. . . .Once these requirements are met, the conditional finding of sufficiency becomes a finding of sufficiency.”

##### LDC 8.4.7.B.6.g.vi. Compliance with Drinking Water Regulations

“When a new community water system subject to the Colorado Primary Drinking Water Regulations is proposed in conjunction with a subdivision, a conditional finding of sufficiency may be issued by the Planning Commission and BoCC in the approval of a preliminary plan or final plat subject to the following:

- CDPHE TMF capacity, analysis and approval thereof, as evidenced by issuance of a Public Water System Identification (PWSID) number;

- Adequate construction surety for the proposed water system which includes all water works identified in the CDPHE TMF analysis;

- Restrictions on the number of building permits or certificates of occupancy issued until the water system is constructed and certified; and

- An entity acceptable to the water court, or Colorado Groundwater Commission or the CDPHE shall be formed or engaged to assure operation of the community water system.”

#### SPECIAL CONDITIONS THAT WILL RESULT IN FINDING OF CONDITIONAL SUFFICIENCY FOR DEPENDABILITY

In addition to any other Conditions set forth in the water review, the County Attorney’s Office also requires the Special Conditions set forth in Exhibit B to be imposed and followed in order to make its recommendation for a conditional finding of sufficiency for dependability.

## EXHIBIT B

### **SADDLEHORN RANCH RESTRICTIVE COVENANT ON TRANSFER OF TITLE**

Gorilla Capital CO Saddlehorn Ranch, LLC, is a Colorado limited liability company ("Declarant") is the owner of real property located in Sections 3 and 10 of Township 13 South, Range 64 West of the 6<sup>th</sup> P.M., El Paso County, Colorado containing approximately 816 acres, and specifically described on the attached **Exhibit 1** and incorporated by this reference, generally known as the Saddlehorn Ranch Subdivision ("Saddlehorn Ranch").

The Board of County Commissioners for El Paso County, Colorado ("El Paso County") is concerned about the completion of houses prior to the completion of the water system infrastructure and prior to the approval of the water system infrastructure to serve as a community water system by Colorado Department of Public Health and Environment ("CDPHE"). Such concerns are predicated on houses being completed, title being transferred to new owners, and the water infrastructure system either failing to be completed by the developer/builder and/or failing to be approved by CDPHE. Such a circumstance places a burden on El Paso County to resolve the failure of the water system infrastructure being completed and/or approved.

The El Paso County, Colorado Land Development Code ("LDC") at § 8.4.7.B.6.g.vi allows El Paso County the ability to impose restrictions on the number of building permits or certificates of occupancy until a water system is constructed and certified. The County's practice has been not to impose such restrictions, but rather to require completion of the water system and certification by a professional engineer that both the water system has been built in accordance with the design that was reviewed by CDPHE and that the system is functional/operational, and to require CDPHE approval of the Technical, Managerial, and Financial Capacity Assessment ("TMF Assessment") prior to approval of a final plat for the subdivision.

The Declarant desires to construct an initial forty-five (45) houses at the same time as the water system infrastructure is being constructed and during the period after the water system infrastructure has been completed and is awaiting approval by the CDPHE of the TMF Assessment. El Paso County believes this would be a violation of Regulation 11, 5 C.C.R. 1002-11, and CDPHE New Public Water System Capacity Planning Manual. Therefore, Applicant intends to construct only an initial fifteen (15) houses during the time that water system infrastructure is being constructed ("Initial 15"). Before El Paso County will agree to issue any building permits in addition to the Initial 15, Declarant shall receive approval of the water system to serve as a community water system including approval of the TMF Assessment, and written proof of such approval, shall be provided to El Paso County to its satisfaction.

El Paso County has agreed to issue building permits, but not certificates of occupancy, for the Initial 15 with the restriction on issuance of certificates of occupancy by El Paso County as set forth in this covenant, and as set forth in the plat note of the

Final Plat for Filing No. 1 of Saddlehorn Subdivision, which plat note shall cross reference this Covenant. No other building permits, and no certificates of occupancy, shall be issued for Saddlehorn Ranch until the water system infrastructure has been completed and has received final approval to serve as a community water system including approval of the TMF Assessment from the CDPHE. Declarant shall have the right to select which lots shall be subject of the Initial 15; however, Declarant shall identify which lots comprise the Initial 15 in the plat note of the Final Plat for Filing No. 1 of Saddlehorn Subdivision.

Declarant may issue deeds for the Initial 15 and shall have such deeds held in escrow by Empire Title of Colorado Springs, LLC ("Empire Title") only to be released from escrow back to Declarant for closing and recording at the direction of El Paso County, pursuant to escrow instructions agreed to by the County, and pursuant to the conditions listed below. Declarant shall indicate in writing to El Paso County Planning and Community Development Services Department which deeds comprise the Initial 15 upon the escrowing of such deeds. No other deeds shall be issued by Declarant for Saddlehorn Ranch until the water system infrastructure has been completed and has received final approval to serve as a community water system including approval of the TMF Assessment from the CDPHE

Declarant is restricted from transferring title to the Initial 15 until:

1. A professional engineer has certified that the water system infrastructure has been built in accordance with the design that was subject of the CDPHE acknowledgement letter, and that the system is functional/operational;
2. A defect warranty collateral for the water system has been posted with El Paso County; and
3. A proposed water operator acceptable to El Paso County has been selected and a description of how the operator will provide operation, maintenance, and management services to the special district for the water system has been delivered by the proposed water operator to El Paso County.
4. El Paso County has agreed, pursuant to the escrow instructions, and has provided written consent/agreement that requirements 1 – 3 above have been met and that the deeds for the Initial 15 can be released.

The restrictions set forth herein concern the transfer of title only; Declarant remains free to enter into non-binding contracts, with fully refundable earnest money, for the purchase and sale of all lots within Saddlehorn Ranch.

The deeds to be held in escrow shall be issued with the Declarant as grantor and the party under contract for each individual lot as grantee. If the grantee for any deed changes after the escrowing of the deed but before the deed is released from escrow, Declarant will so inform El Paso County and Empire Title in writing and shall thereafter







**PROPERTY DESCRIPTION:**

**PARCEL A:**

A PARCEL OF LAND LOCATED IN SECTION 3, TOWNSHIP 13 SOUTH, RANGE 64 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 3; THENCE S 89 DEGREES 21 MINUTES 33 SECONDS E, ALONG THE NORTH LINE OF SAID SECTION 3, 5275.27 FEET TO THE NORTHEAST CORNER THEREOF; THENCE S 00 DEGREES 04 MINUTES 45 SECONDS E, ALONG THE EAST LINE OF SAID SECTION 3, 1841.19 FEET; THENCE N 89 DEGREES 49 MINUTES 04 SECONDS W, 5280.38 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 3; THENCE N 00 DEGREES 05 MINUTES 14 SECONDS E, ALONG SAID WEST LINE, 1883.39 FEET TO THE POINT OF BEGINNING.

EXCEPT THOSE PORTIONS CONVEYED TO EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO, IN SPECIAL WARRANTY DEEDS RECORDED JANUARY 29, 2015 AT RECEPTION NO. 215008985 AND RECEPTION NO. 215008986.

**PARCEL B:**

A PARCEL OF LAND LOCATED IN SECTION 3, TOWNSHIP 13 SOUTH, RANGE 64 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 3; THENCE N 00 DEGREES 05 MINUTES 14 SECONDS E, ALONG THE WEST LINE OF SAID SECTION 3, 1974.75 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE, N 00 DEGREES 05 MINUTES 14 SECONDS E, 1649.14 FEET; THENCE S 89 DEGREES 49 MINUTES 04 SECONDS E, 5280.38 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 3; THENCE S 00 DEGREES 04 MINUTES 45 SECONDS E, ALONG SAID EAST LINE, 1649.15 FEET; THENCE N 89 DEGREES 49 MINUTES 04 SECONDS W, 5285.17 FEET TO THE POINT OF BEGINNING.

**PARCEL C:**

A PARCEL OF LAND LOCATED IN SECTION 3 AND SECTION 10, TOWNSHIP 13 SOUTH, RANGE 64 WEST, OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 3; THENCE N 00 DEGREES 05 MINUTES 14 SECONDS E, ALONG THE WEST LINE OF SAID SECTION 3, 327.11 FEET; THENCE S 89 DEGREES 49 MINUTES 04 SECONDS E, 5289.95 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 3; THENCE S 00 DEGREES 04 MINUTES 45 SECONDS E, ALONG SAID EAST LINE, 327.11 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 3; THENCE S 00 DEGREES 57 MINUTES 38 SECONDS W, ALONG THE EAST LINE OF SAID SECTION 10, 1320.52 FEET TO THE SOUTHEAST CORNER OF THE

NORTH HALF OF THE NORTH HALF OF SAID SECTION 10; THENCE N 89 DEGREES 48 MINUTES 49 SECONDS W, ALONG THE SOUTH LINE OF SAID NORTH HALF OF THE NORTH HALF OF SAID SECTION 10, 5285.51 FEET TO THE SOUTHWEST CORNER THEREOF; THENCE N 00 DEGREES 43 MINUTES 38" SECONDS E, ALONG THE WEST LINE OF SAID SECTION 10, 1320.06 FEET TO THE POINT OF BEGINNING.

Per the Commitment for Title Insurance, issued by Westcor Land Title Insurance Company, Commitment No. 56676ECS, dated August 2, 2018.

**PARCEL 21:**

A PORTION OF THE SOUTH HALF OF SECTION 3, TOWNSHIP 13 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 3; THENCE ALONG THE EAST LINE OF SAID SECTION 3, S00°42'25"E (BEARINGS ARE RELATIVE TO THE NORTH LINE OF SECTION 3, BEING MONUMENTED AT THE WESTERLY END BY A FOUND NO.6 REBAR WITH A 3-1/4" ALUMINUM CAP IN A VAULT, STAMPED "PLS 17496", AND AT THE EASTERLY END BY A FOUND NO. 6 REBAR WITH 3-1/2" ALUMINUM CAP IN A VAULT, STAMPED "LS 17496", AND MEASURED TO BEAR S89°59'26"E, A DISTANCE OF 5275.03 FEET), A DISTANCE OF 3490.37 FEET, TO THE SOUTHEAST CORNER OF THAT PARCEL DESCRIBED IN THE QUIT CLAIM DEED RECORDED AT RECEPTION NO. 213021177, IN THE OFFICIAL RECORDS OF EL PASO COUNTY; SAID CORNER ALSO BEING THE POINT OF BEGINNING; THENCE S00°42'25"E, CONTINUING ALONG THE WEST LINE OF THAT PARCEL DESCRIBED IN THE QUIT CLAIM DEED RECORDED AT RECEPTION NO.213113100, IN SAID OFFICIAL RECORDS, A DISTANCE OF 1647.65 FEET, TO THE NORTHEAST CORNER OF THAT PARCEL DESCRIBED IN THE QUIT CLAIM DEED RECORDED AT RECEPTION NO. 213043391, IN SAID OFFICIAL RECORDS; THENCE S89°33'10"W, ALONG THE NORTH LINE OF SAID PARCEL, A DISTANCE OF 5289.71 FEET, TO A POINT LYING ON THE WEST LINE OF SAID SECTION 3; THENCE ALONG SAID WEST LINE, N00°32'28"W, A DISTANCE OF 1645.40 FEET, TO THE SOUTHWEST CORNER OF SAID PARCEL, RECORDED AT RECEPTION NO. 213021177, IN SAID OFFICIAL RECORDS; THENCE N89°31'43"E, ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 5284.95 FEET, TO THE POINT OF BEGINNING.

Per the Commitment for Title Insurance, issued by Land Title Guarantee Company, Order No. SC55073032, dated October 1, 2018.

Being more particularly described by metes and bounds as follows:

**COMMENCING** at the Northeast Corner of Section 3, Township 13 South, Range 64 West of the 6<sup>th</sup> Principal Meridian; thence along the east line of said Section 3, S00°42'27"E (Basis of bearings is the North line of Section 3, Township 13 South, Range 64 West of the 6<sup>th</sup> Principal Meridian, monumented at the West end by a No. 6 Rebar with a 3-1/4" aluminum cap, properly marked, in a monument box, "PLS 17496" and at the East end by a No. 6 rebar with a 3-1/2" aluminum cap, properly marked, in a monument box, "PLS 17496", having a measured bearing and distance of S89°59'23"E, 5275.26'. Bearings are relative to Colorado State Plane Central Zone (0502)), a distance of 30.00 feet, to the **POINT OF BEGINNING**; thence continuing along

said east line, S00°42'27"E, a distance of 5,435.28 feet, to the Southeast Corner of said Section 3, said point also being the Northeast Corner of Section 10, Township 13 South, Range 64 West of the 6<sup>th</sup> Principal Meridian; thence along the east line of the North 1/2 of the North 1/2 of said Section 10, S00°19'54"W, a distance of 1,320.51 feet, to the North 1/16<sup>th</sup> Corner of said Section 10; thence leaving said east line and along the south line of the North 1/2 of the North 1/2 of said Section 10, S89°34'02"W, a distance of 2,642.78 feet, to the North-Center-Center 1/16<sup>th</sup> Corner of said Section 10; thence continuing along said south line, S89°34'07"W, a distance of 2,612.73 feet, to a point that is 30.00 feet distant from the North 1/16<sup>th</sup> Corner of said Section 10, said point also being a point on the east right-of-way line of Curtis Road; thence along said east right-of-way line and 30.00 feet parallel to the west line of said North 1/2 of the North 1/2 of said Section 10, N00°05'54"E, a distance of 1,319.14 feet, to a point that is 30.00 distant to the Northwest Corner of said Section 10, also being the Southwest corner of said Section 3; thence continuing along said east right-of-way line, along the following four (4) courses:

1. N00°32'28"W, a distance of 4,608.42 feet;
2. N89°27'32"E, a distance of 19.98 feet;
3. N00°32'28"W, a distance of 820.00 feet;
4. N44°46'13"E, a distance of 40.00 feet,

to a point on the south right-of-way line of Judge Orr Road, thence along said south right-of-way line, along the following three (3) courses:

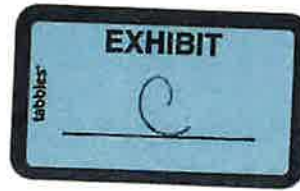
1. S89°59'23"E, a distance of 822.24 feet;
2. N00°00'37"E, a distance of 20.00 feet;
3. S89°59'23"E, a distance of 4,374.49 feet,

to the **POINT OF BEGINNING**.

Containing 35,565,654 S.F. or 816.475 acres, more or less.



**COLORADO**  
Department of Public  
Health & Environment



February 4, 2021

Bill Guman  
Saddlehorn Ranch Metropolitan District  
731 N Weber St.  
Colorado Springs, CO 80903

RE: Approval of Drinking Water Final Plans and Specifications for Construction  
Saddlehorn Ranch Water System, Saddlehorn Ranch Metropolitan District  
Public Water System Identification (PWSID) No. CO0121703, El Paso County  
ES Project No. ES.20.DWDR.05857

Dear Mr. Guman:

The Colorado Department of Public Health & Environment (Department), Water Quality Control Division, Engineering Section has received and reviewed the Final Plans and Specifications for the Saddlehorn Ranch Water System in accordance with Section 11.4(1)(b) of the *Colorado Primary Drinking Water Regulations* (Regulation 11). The design meets or exceeds the requirements of the *State of Colorado Design Criteria For Potable Water Systems* (Design Criteria) and is hereby approved.

This approval is limited to the following:

- Well A1 (SDWIS ID: 001): Groundwater source
  - Well Permit Number 66937. Drilled well. Screen: 938-1,380 feet, total depth: 1,390 feet, static water level approximately 660 feet.
  - Well improvements: casing raised to provide a minimum of 12 inches between grade and wellhead; 12 or 16 mesh noncorrodible vent screen.
  - Flow: 150 gallons per minute (gpm).
  - Associated piping and appurtenances.
- Well LFH1 (SDWIS ID: 002): Groundwater source
  - Well Permit Number 66938. Drilled well. Screen: 1,736-1,977 feet, total depth: 2,035 feet, static water level approximately 1,280 feet.
  - Well improvements: casing raised to provide a minimum of 12 inches between grade and wellhead; 12 or 16 mesh noncorrodible vent screen.
  - Flow: 250 gpm.
  - Associated piping and appurtenances.
- Treatment Plant (SDWIS ID: 003)
  - Treatment for Well A1 and Well LFH1 (001 & 002), Maximum flowrate of 250 gpm.
  - Sodium hypochlorite treatment (421):
    - Sodium hypochlorite feed pump (design basis: one duty, one standby, Blue-White Industries, Flexflo), 120 gallon dual wall solution feed tank (design basis: Peabody Engineering Gemini Cylindrical Tank).
    - Sodium hypochlorite injection point prior to tanks.
    - Wells and chlorine pump electrically connected to control dosing.
  - Chlorine contact time pipe (825): 1,292 gallons (220 lf of 12-inch C900 DR 18 pipe) with a baffle factor of 0.6.
  - Pressure-Sand Filtration (344):
    - Reaction vessel, 36-inch diameter by 60-inch straight sideshell, ends fitted with semi-elliptical heads, working pressure of 60 psig and test pressure of 78 psig (design basis: Filtronics Model RV-300).
    - Two filter vessels to treat primarily iron and manganese, for taste, odor, and aesthetics, 54-inch diameter by 54-inch tall each, working pressure of 60 psig and test pressure of 78 psig (design basis: Filtronics Model FVD-07, Electromedia I, Dual Automatic Filter Station, NSF 61 certified).



- Backwash provided by distribution system pumps, sized to provide adequate backwash volume and system demands.
- Backwash water measured via magnetic flow meters. One meter installed on backwash inlet line (design basis: 6-inch). One meter installed on effluent line (design basis: 4-inch).
- Backwash directed to a buried exterior storage tank, recycled into system at a rate of <10% of the influent flow from wells.
  - Tank design and details to be submitted to the Department for review once the tank manufacturer is selected and the design is completed. See condition below.
  - Recycle pump, details to be submitted with tank design (design basis: Grundfos submersible pump).
  - Associated piping and appurtenances.
- Filtration appurtenances: differential pressure gauges at inlet and outlet, combined raw water flow meter prior to filters, flowmeter on each filter. Backwash line has a check valve for cross-connection control and sample port.
- Treatment appurtenances. Raw water sampling tap (one per well), finished water meter (design basis: 6" Ultra Mag UM06), handheld free chlorine residual analyzer, Hach wall-mounted reagentless continuous free chlorine analyzer, and finished water tap (residual chlorine monitoring location) after distribution system pumps.
- Distribution system pumps located within treatment plant following distribution storage tank. Dual pump station (design basis: Goulds, 10HP CRE 45-1 multistage centrifugal pump, operating in lead/standby mode), with variable frequency drives (VFDs).
- High capacity fire flow pump located within treatment plant following distribution storage tank (design basis: 1,500 GPM for 120 minutes).
- Associated piping and appurtenances.
- Acknowledgement of a distribution storage tank (SDWIS ID: 004):
  - Tank design and details to be submitted to the Department for review once the tank manufacturer is selected and the design is completed. See condition below.
  - 286,500 gallon, above grade, epoxy-coated steel tank.
  - Circular: 42.5-foot diameter and 28-foot height.
  - Tank Appurtenances (to be confirmed in final tank design and details):
    - Inlet/Outlet: 12-inch inlet riser pipe with silt stop 6-inches minimum above floor.
    - Drain line: 8-inch from tank to daylight with a headwall and plunge pool protected with rip-rap, southeast of tank. Drain line terminates with a duckbill valve, minimum of 1-foot above backwater.
    - Overflow: 12-inch high by 12-inch deep by 2-foot wide box weir inside tank connecting to an 8-inch overflow line on tank exterior. Overflow line terminates with a duckbill valve (design basis: 8-inch Series 35 Tideflex), 24-inch minimum above grade to a splash pad with rip-rap and discharges to 5-foot wide, 18-inch deep rip-rap channel which flows to the southeast to shared plunge pool with drain line.
    - Vent: Dedicated downward-turned vent with 24 mesh, noncorrodible screen with an opening 36-inches above tank roof.
    - Manway: Two 24-inch circular manways 180 degrees apart.
    - Access hatch on tank roof. Extends a minimum of 4-inches above the roof deck with an overlapping curb. Cover is hinged on one side and lockable.
    - Hydrodynamic mixing system (design basis: Tideflex).

Approved Deviations:

The approval includes the following deviations from the Design Criteria:

- Section 2.6 of the Design Criteria requires standby power. The system requested a deviation based on: 1) that backup power will be provided for the distribution pumps and the high capacity pump via an on-site generator in the event of a power failure, however 2) the wells and treatment system will not have backup power and will shut down during a power outage. The finished water storage tank operating levels will be set to provide emergency reserves within the tank during a power outage. Based on the information supplied to support this deviation, the Department accepts this deviation

request and has approved an on-site generator for only the distribution pumps and the high capacity pump.

- Section 2.8 of the Design Criteria requires each public water system to have its own laboratory facility. The system requests a deviation based on the fact that the required water quality sampling consists of chlorine residual, therefore laboratory facilities are not required. Based on the information supplied to support this deviation, the Department accepts this deviation request and has approved the public water system without laboratory facilities given that chlorine residual will be monitored continuously and that there will be a handheld free chlorine analyzer in the treatment plant.

#### Conditions of Approval:

The approval is subject to the following conditions:

#### General Requirements:

- This approval is conditional upon submission for Department review of the complete finished water storage tank and buried reclaim/backwash water storage tank design and drawings prepared by the selected tank manufacturers and includes design calculations demonstrating the tank vent and overflow sizing meets design requirements and the tank designs meets the State of Colorado Design Criteria for Potable Water Systems. Buried reclaim/backwash tank design shall include recycle pump details.
- Section 2.21 of the Design Criteria requires all chemicals and materials that come in contact with treated or partially treated water to be ANSI/NSF 60 and 61 certified, respectively, for potable water use.
- All wells, pipes, tanks and equipment that can convey or store water intended for potable use must be disinfected in accordance with current AWWA procedures prior to initial use as required in Sections 2.15, 6.6.2, 7.0.18 and 8.7.7 of the Design Criteria.
- All change orders or addenda that address treatment, storage or piping must be submitted to this office for review and approval by the Department.
- Upon completion of construction and prior to commencement of operation, a completed "Drinking Water Construction Completion as Approved Certification Form" stating that the system was constructed as approved and the operational starting date must be submitted to the Department. This form is available at <https://www.colorado.gov/cdphe/wq-facility-design-and-approval-forms> under the "Drinking water construction complete form" heading.
- As required by Section 11.4(3)(b) of Regulation 11, if construction of the project is not commenced within one year from the date of this letter, this approval will expire and all information will be required to be updated and resubmitted for review and approval by the Department. Please note that this requirement is specific to this approval and the associated commencement of construction and has no impact on other compliance deadlines that are set forth in Regulation 11 and that may be included in other communications that are issued by the Department.

#### Monitoring Requirements:

- Section 11.5(5) of Regulation 11 requires that suppliers submit any revisions to the Monitoring Plan within 30 days of the effective date of the change. Changes that are made under this approval may require updates to multiple parts of the Monitoring Plan. Information regarding monitoring plan requirements is available online at: <http://www.colorado.gov/cdphe/wqforms> on the Drinking Water page under the "Inventory/System Updates" heading.
- **Lead and Copper Monitoring:** In accordance with Section 11.26(2)(d)(iv)(D)(I) of Regulation 11, the Engineering Section reviewed the project scope to determine if lead and copper sampling requirement modifications are appropriate as a result of the project. Based on the project scope (new water system), there may be a possible impact to corrosivity. In accordance with the State of Colorado Design Criteria for Potable Water Systems - Table A.2 Impacts to Corrosivity Categories the system is a Category 2, the Engineering Section recommends that the supplier's monitoring frequency and sample sites for lead and copper be increased to the standard six month monitoring following completion of construction.
- The project includes installation of two new wells that requires completion of initial sampling.
- The supplier has elected to perform triggered source water monitoring. Therefore, under normal operating conditions the supplier does not need to maintain 4-log virus inactivation before or at the first customer on a continuous basis. In the event the supplier has a routine positive total coliform

sample, the supplier will be required to monitor and sample the source water for fecal indicators at that time. If the source water sampling determines that fecal contamination exists within the source, the supplier may be required increase treatment to meet 4-log virus inactivation on a continuous basis until the source of contamination can be identified and removed. Alternatively, the supplier may opt to discontinue to use the source. As outlined in the Basis of Design Report, the treatment conditions that must exist to achieve 4-log inactivation of viruses are as follows:

- o The treatment conditions that must exist to achieve 4-log inactivation of viruses requires the supplier to continuously maintain a chlorine residual of 2 mg/L at the finished water tap (residual chlorine monitoring location) after distribution system pumps, assuming a flow rate of 250 gpm, a pH of 8.8, a liquid temperature at or greater than 10-degrees Celsius, a baffle factor of 0.6 and a minimum active storage volume of 1,292 gallons.
  - NOTE: The capability of providing 4-log treatment has been shown with a free chlorine residual equal to 2.0 mg/L. The maximum residual disinfection level (MRDL) for chlorine is 4.0 mg/L on a running annual average basis. While the chlorine residual suggested to maintain 4.0 log virus inactivation is below the MRDL, treated water with **free chlorine residuals greater than 2.0 mg/L may be considered unpalatable** for certain customers.
- o The Saddlehorn Ranch MD is a groundwater system with a population less than or equal to 3,300, therefore Section 11.11 of Regulation 11 requires daily chlorine monitoring at the monitoring location specified in the above bullet (i.e., downstream of chlorine contact time). The supplier will be required to work with the Department's Drinking Water Compliance Assurance Section regarding the specific monitoring requirements.

Facility Classification under Regulation 100:

- In accordance with the current Colorado Operators Certification Board regulations, the water treatment plant is a Class "C" water treatment facility and the distribution system is a Class "1" distribution system.

The documents that were reviewed for this approval are as follows:

- Engineering Report dated November 2020 titled *Basis of Design Report for Saddlehorn Ranch Metropolitan District*. Prepared by JDS Hydro Consultants, Inc. for Saddlehorn Ranch Metropolitan District.
- Drawing Set dated October 2020 titled *Saddlehorn Ranch Metropolitan District - Overall Water System*. Prepared by JDS Hydro Consultants, Inc. for Saddlehorn Ranch Metropolitan District.
- Project Manual (Specifications) dated November 2020. Prepared by JDS Hydro Consultants, Inc. for Saddlehorn Ranch Metropolitan District.
- Backflow Prevention and Cross-connection Control Program plan. Prepared by JDS Hydro Consultants, Inc. for Saddlehorn Ranch Metropolitan District.
- Preliminary Operations and Maintenance Procedures plan. Prepared by JDS Hydro Consultants, Inc. for Saddlehorn Ranch Metropolitan District.
- Geotechnical report dated April 2019 titled *Soil, Geology, Geologic Hazard, and Wastewater Study, Saddlehorn Ranch Subdivision El Paso County, Colorado*. Prepared by Entch Engineering, Inc. for Saddlehorn Ranch Metropolitan District.
- Public Water System Monitoring Plan dated September 2020 titled *Saddlehorn Ranch Metropolitan District*. Prepared by JDS Hydro Consultants, Inc. for Saddlehorn Ranch Metropolitan District.
- BDR\_Response dated January 2021. Prepared by JDS Hydro Consultants, Inc. for Saddlehorn Ranch Metropolitan District.
- Miscellaneous correspondence.

Please be advised of the following notifications and requirements that may apply to the project:

- Approval of this project is based only upon engineering design to provide safe potable water, as required by Regulation 11 and shall in no way influence local building department or local health department decisions on this project. This review does not relieve the owner from compliance with all Federal, State and local regulations and requirements prior to construction nor from responsibility for proper engineering, construction and operation of the facility.
- Any point source discharges of water from the facility are potentially subject to a discharge permit under the State Discharge Permit System. Any point source discharges to state waters without a



permit are subject to civil or criminal enforcement action. If you have any questions regarding permit requirements contact the Permits Unit at 303-692-3500.

Please direct any further correspondence regarding the technical approval (plans and specifications/design review) to:

Marty Quinn, P.E.  
Colorado Department of Public Health & Environment  
Water Quality Control Division - Engineering Section  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

Thank you for your time and cooperation in this matter. Please contact me by telephone at 303-692-3513 or by email at martin.quinn@state.co.us if you have any questions.

The Engineering Section is interested in gaining feedback about your experience during the engineering review process. We would appreciate your time to complete a Quality-of-Service Survey regarding your experience during the engineering review process leading up to issuance of this decision letter. The Engineering Section will use your responses and comments to identify strengths, target areas for improvement and evaluate process improvements to better serve your needs. Please take a moment to fill out our [survey](#).

Sincerely,

**Martin Quinn**

Digitally signed by Martin Quinn  
Date: 2021.02.04 13:54:25 -07'00'

Marty Quinn, P.E.  
Senior Review Engineer  
Engineering Section | Water Quality Control Division  
Colorado Department of Public Health & Environment

cc: Ryan Mangino, JDS Hydro  
Lisa Lemmon, El Paso County Public Health  
Catherine McGarvy, El Paso County Public Health  
PWSID CO0121703  
Doug Camrud, WQCD ES Engineering Review Unit Manager  
DWCAS

