

EL PASO COUNTY

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July 18, 2019

SF-18-27 TimberRidge Estates

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FINDINGS AND CONCLUSIONS:

1. This is a proposal by TimberRidge Estates, LLC ("Applicant") for a 10 lot subdivision on a parcel of approximately 34.92 acres (the "Property"). The Property is part of The Retreat at TimberRidge PUD approved on March 27, 2018. This proposal is for a final plat of Phase I. Eight lots will be 2.5 acres in size and two lots will be five acres in size. The property is currently zoned PUD (Planned Unit Development).
2. The Applicant has provided for the source of water to derive from individual on-lot wells, as provided through the Second Amended Findings of Fact, Conclusions of Law, Judgement and Decree in District Court Water Division 2 Case No. 2016CW3095 ("Decree"). Pursuant to the Water Supply Information Summary ("WSIS"), the source of the water supply will derive from the Dawson aquifer, operating pursuant to the augmentation plan defined in the Decree. The WSIS states the demand is 2.6 acre-feet for household use (0.26/lot), 2.25 acre-feet for irrigation (0.225/lot), and up to 0.375 acre-feet (0.0375/lot) for any combination of uses, which may include in-house uses, stock watering, irrigation, hot tubs, pools, decorative ponds, and augmentation through septic system return flows. The water needs for the subdivision total 5.225 acre-feet per year. Based on Applicant's demand, Applicant must be able to provide a supply of 1,567.5 acre-feet of water (5.225 acre-feet/year x 300 years) to meet the County's 300 year water supply requirement.
3. In a letter dated October 9, 2018, the State Engineer reviewed the submittal to plat the approximately 35 +/- acre parcel into a 10 lot subdivision. The State Engineer reviewed the WSIS and the Decree submitted with the proposal. The State Engineer stated that the "source of water is to be provided by on-lot wells producing from the [Dawson]¹ or Arapahoe aquifer that will operate pursuant to the augmentation plan

¹ The SEO Letter misidentified the aquifers as the Denver or Arapahoe. I have corrected them here to conform to the Decree.



decreed by the Division 2 Water Court in case no. 2016CW3095.” And further, according to the Decree, the following amounts were determined to be available underlying the Property:

Aquifer	Volume (AF)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson (NNT)	1,940	19.4	6.46
Denver (NNT) 4%	1,679	16.8	5.59
Arapahoe (NT)	1,499	15.0	4.99
Laramie-Fox Hills (NT)	1,005	10.1	3.35

The State Engineer notes that the augmentation plan in the Decree “allows for diversion of 5.225 acre-feet annually from [the] Dawson aquifer for a maximum of 300 years. Future wells constructed into the Dawson aquifer will require that the applicant apply for, and obtain a [sic] well permits issued pursuant to Section 37-90-137(4) C.R.S.” The State Engineer further states that “pursuant to CRS 30-28-136(1)(h)(l), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(2) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.”

4. Decree and plan for augmentation. The Decree quantifies the water rights for all of the groundwater underlying the Property as referenced in the table above. In the plan for augmentation, the Applicants are permitted to drill one well into the Dawson aquifer for each lot. Septic system return flows will replace depletions during the pumping period and Arapahoe aquifer water will be reserved in amounts sufficient to replace all post-pumping depletions. Each of the 10 wells will be limited to pumping 0.5225 acre-feet per lot per year. Pursuant to the Decree, the uses of water are expected to be, but are not limited to, “indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools, and decorative uses such as decorative ponds and fountains, and augmentation through septic system return flows.”

Replacement of depletions during pumping. For any wells constructed into the not-nontributary Dawson aquifer, the Applicant is required to replace actual stream depletions on an annual basis during the 300 years of pumping by return flows from non-evaporative septic systems. The Decree indicates that “during pumping, depletions to the Arkansas River system will gradually increase to a maximum of approximately 34.45 percent of annual pumping in the 300th year, or 1.8 acre feet based on annual pumping of 5.225 acre feet. Applicants shall replace those depletions with septic system return flows, which will equal 1.8 acre feet annually for 10 lots, based on assumed average annual indoor use of at least 0.2 acre foot per dwelling.” The Decree notes that if the

Property is subdivided into fewer than 10 lots, the annual amount allowed to be pumped from each well will remain 0.5225 acre-feet per well (one well per lot) as the “return flows from septic systems will still always exceed stream depletions during the 300 year pumping period.” The Decree further notes that septic system return flows are necessary to provide an adequate source of replacement water during the pumping period.

Replacement of post-pumping depletions. The plan for augmentation will have a pumping period of a minimum of 300 years. The Decree requires the Applicant to replace post-pumping depletions by reserving up to 1,324 acre-feet of water from the nontributary Arapahoe aquifer and construct a well into this aquifer to replace post-pumping depletions. The Decree requires that this reserved water may not be severed from ownership of the overlying property.

5. Analysis. Applicant’s total water demand for the TimberRidge Estates Subdivision is 5.225 acre-feet/year. Pursuant to the Decree, one Dawson aquifer well may be drilled on each of the 10 proposed lots and may pump up to 0.5225 acre-feet per year, for a total of 5.225 acre-feet of water per year for the subdivision. The Decree determined that there is an available water supply from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers and specifically that 5.225 acre-feet is available annually for 300 years from the Dawson aquifer. The plan for augmentation permits withdrawal of 5.225 acre-feet/year from the Dawson aquifer for 300 years (for a 300 year supply of 1,567.50 acre-feet), which is adequate to meet the demand of the subdivision. Based on the permitted withdrawal of 5.225 acre-feet annually for 300 years, availability of 5.225 acre-feet annually from the Dawson aquifer adjudicated for the Property, and an annual water demand of 5.225 acre-feet/year, there appears to be a sufficient water supply to meet the demands of the TimberRidge Estates Subdivision utilizing the Dawson aquifer water supply.

6. The water quality requirements of Section 8.4.7.B.10 of the El Paso County Land Development Code must be satisfied.

7. Therefore, based on the findings of sufficiency and no injury by the State Engineer pursuant to their review of District Court Water Division 2 Case No. 2016CW3095, and pursuant to the requirements below, the County Attorney’s Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. The El Paso County Health Department shall make a finding as to water quality.

REQUIREMENTS:

A. Applicant shall take all necessary steps to ensure that if and when Applicant conveys the property for this subdivision, that the appropriate water rights and obligations of the Decree are also conveyed to the successor purchaser. These Requirements shall apply to the Applicant and its successors and assigns. Applicant shall create a

Homeowners' Association ("HOA") and advise the HOA and all future owners of these lots of all applicable requirements of the Decree entered in District Court Water Division 2 Consolidated Case No. 2016CW3095, as well as their obligations to comply with the Decree and plan for augmentation, including but not limited to, costs of operating the plan for augmentation, including the costs for constructing and pumping the Arapahoe aquifer well for replacing post-pumping depletions, and the responsibility for metering and collecting data regarding water withdrawals from all wells.

B. Applicant shall reserve and convey by warranty deed to the HOA, Applicant's interests, rights, and obligations with respect to 1,324 acre-feet of Arapahoe aquifer groundwater to be used for replacing post-pumping depletions. Applicant shall 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. The conveyance instruments and/or deeds shall provide that these water rights shall be appurtenant to the land to be used for replacing depletions to the applicable stream systems, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. Such conveyance instruments and/or deeds shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat.

C. Applicant shall require non-evaporative septic systems and leach fields to replace depletions during 300 years of pumping from the Dawson aquifer. Deeds for the subdivision property as a whole and individual lots shall specifically state that all return flows shall be dedicated by Grantee to replacing depletions during pumping of the Dawson aquifer pursuant to the plan for augmentation, and said return flows shall not be sold, leased or otherwise used for any other purpose, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. In addition, the Covenants shall recite that return flows from non-evaporative septic systems shall comply with the requirements of the plan for augmentation, that such return flows shall only be used to replace depletions, shall not be sold, leased or otherwise used for any other purpose, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered.

D. Applicant and its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the underlying Dawson aquifer to satisfy El Paso County's 300 year water supply requirement, specifically 156.75 acre-feet total for each of the 10 lots, as well as sufficient water rights in the Arapahoe aquifer to accommodate post-pumping depletions. Said Deed shall provide that the water rights shall be appurtenant to the land, to be used for the benefit of the lot owner, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. It is anticipated that these conveyances will satisfy the State Engineer's evidentiary requirement that an applicant for an individual

on-lot well has acquired the right to the portion of water being requested on the application. Applicant shall provide a form deed for such conveyance that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

E. Applicant shall submit a Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA 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 of the final plat. Said Declaration shall cross-reference the decreed plan for augmentation and the related water rights decrees and shall recite the obligations of the individual lot owners and the HOA under each of these documents. Said Declaration shall specifically require that no well constructed in the Dawson aquifer may be used for any purpose unless it is also used in a residence on the lot on which such well is located. Applicant shall provide a copy of the Certificate of Incorporation of the HOA by the Secretary of State to the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

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 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: Kari Parsons, Project Manager, Planner III