

September 25, 2020

SF-20-7                      Reserve at Corral Bluffs Filing No. 3  
                                    (Final Plat)

*LS 9/25/20*

Reviewed by:              Lori Seago, Senior Assistant County Attorney      LS 9/25/20  
                                    Edi Anderson, Paralegal, ACP

#### **FINDINGS AND CONCLUSIONS:**

1. This is a proposal by Corral Ranches Development Company for a Final Plat to permit development of 6 single family dwellings, plus a tract reserved for Filing 4, on 59.95 acres of land within the Reserve at Corral Bluffs subdivision. This request reflects the third of five filings within the Reserve at Corral Bluffs Preliminary Plan. The preliminary plan was previously approved to subdivide 186.38 acres of land into 31 single family lots plus an open space tract. The property is zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells withdrawing from the not-nontributary Arapahoe and Denver aquifers pursuant to Determination of Water Right Nos. 516-BD (Arapahoe) and 517-BD (Denver). Applicant estimates its annual water needs to serve household use at 1.80 acre-feet/year (0.30 acre-feet per lot), plus irrigation of lawn and gardens at 0.93 acre-feet/year and watering of 4 large domestic animals on each lot at 0.27 acre-feet/year for a total of 0.5 acre-feet per lot or a total of 3.0 acre-feet annually for the 6 lots. Based on Applicant's demand, Applicant must be able to provide a supply of 900 acre-feet of water (3 acre-feet/year x 300 years) to meet the County's 300-year water supply requirement.

3. The State Engineer's Office provided a letter in response to the proposal dated April 14, 2020. The letter referred to their previous correspondence dated June 4, 2013, in which they reviewed the Reserve at Corral Bluffs Preliminary Plan and the 6-lot Final Plat Filing 1. As noted in their earlier review, the State Engineer stated that the

allowed average annual withdrawal under Determination of Water Right No. 516-BD (Arapahoe aquifer) is 55.1 acre-feet and under Determination of Water Right No. 517-BD (Denver aquifer) is 31.5 acre-feet, for a combined annual total of 86.6 acre-feet for a period of 100 years. Applying the County's 300-year rule, the reduced annual withdrawals would be 18.4 acre-feet from the Arapahoe aquifer and 10.5 acre-feet from the Denver aquifer, for a combined annual total withdrawal for 300 years of 28.9 acre-feet, as detailed in the table below.

Aquifer	Determination No.	Total acre-feet available	Acre-Feet available (100 years)	Acre-Feet available (300 years)
Arapahoe (NNT)	No. 516-BD	5510	55.1	18.4
Denver (NNT)	No. 517-BD	3150	31.5	10.5
<b>Total</b>		8,660 A/F	86.6 A/F	<b>28.9 A/F</b>

The Applicant identified that Lots 1-21 will access either the Denver or Arapahoe aquifers and Lots 22-31 will access only the Arapahoe aquifer. Based on these designations, the State Engineer further stated that the 18.4 acre-feet annual supply from the Arapahoe aquifer is more than the 15.5 acre-feet annual demand for all 31 lots in the preliminary plan if all 31 lots used the Arapahoe aquifer. The Engineer stated that the 10.5 acre-feet annual supply from the Denver aquifer would meet the annual demand should all of Lots 1-21 use the Denver aquifer. As noted in the State Engineer's letter dated April 14, 2020, the Applicant stated that Lots 1 – 4 of this Filing 3 correlate to lots 1-4 (the letter incorrectly states lots 13 – 26) of the preliminary plan and Lots 5 – 6 of this Filing 3 correlate to lots 30 – 31 of the preliminary plan. The State Engineer indicated its previous findings dated June 4, 2013 remain in effect and based on that letter and pursuant to C.R.S. § 30-28-136(1)(h)(I) and (II), "it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights."

4. Analysis: There is a previously committed amount of 6.0 acre-feet/year (1,800 acre-feet total) for 300 years for Filings 1 and 2 of the Reserve at Corral Bluffs subdivision. The combined allowed average annual amount of withdrawal for the entire 31 lots of the preliminary plan is 28.9 acre-feet or 8,670 acre-feet total; therefore, there appears to be a sufficient water supply based on the combined aquifers. Based on the State Engineer's analysis, there is sufficient water for this Filing 3 to be served either by water from the Denver and Arapahoe aquifers or from the Arapahoe aquifer alone.<sup>1</sup>

<sup>1</sup> Note: The Upper Black Squirrel Creek Ground Water Management District submitted comments to the Planning and Community Development Department dated April 10, 2020, stating that they did "not see on record that this subdivision has a replacement plan/augmentation plan on file with the State. We see that they have a determination of water right but no replacement plan." The County Attorney's Office notes the comments dated November 29,

5. The water quality requirements of Section 8.4.7.B.10 of the Land Development Code must be satisfied.

6. Therefore, based upon the State Engineer's finding that the proposed water supply is adequate and will not cause material injury, pursuant to Determination of Water Right Nos. 516-BD and 517-BD, and based on the requirements listed below, the County Attorney's Office recommends a finding of sufficiency as to quantity and dependability. The El Paso County Health Department shall provide an opinion as to water quality.

REQUIREMENTS:

- A. Applicant, their successors and assigns, shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owner(s) of this filing and future filings, their successors and assigns, regarding all applicable requirements of the Colorado Ground Water Commission Determination of Water Right Nos. 516-BD and 517-BD, including the requirement that Lots 5 and 6 be may only use water from the Arapahoe aquifer and the 4% replacement requirements to be met by returning to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal, as well as their obligations to comply with the Determinations and their responsibility for any metering and data collecting that may be required regarding water withdrawals from wells.
- B. Should Applicant, their successors and assigns, convey the Property, then at the time of each lot sale, they shall convey by warranty deed to individual lot owner(s) sufficient water rights in the appropriate aquifer (Denver or Arapahoe) pursuant to Determination of Water Right Nos. 516-BD and/or 517-BD underlying the property to satisfy El Paso County's 300 year water supply requirement: Denver or Arapahoe aquifer requirements for each lot are 150 acre-feet (0.5 acre-feet/lot/year x 300 years). Said conveyance instrument shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for the primary supply and replacement requirements for the lot.
- C. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions to the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Declarations shall cross-reference Determination of Water Right Nos. 516-BD and 517-BD and the replacement requirements therein, shall recite the obligations of the individual lot

2011, by Wm. Curtis Wells, CPG, that "[s]ince the property is more than one mile from the aquifer/alluvium contact, no formal replacement plan is required, only that four percent of the water pumped is released to shallow sandy soils." The County Attorney's Office included the 4% replacement obligation in its requirements.

owners, and shall reference the water conveyance requirements for each lot as described in paragraph B above.

- D. Applicant, their successors and assigns, shall record all applicable documents including, but not limited to, Determination of Water Right Nos. 516-BD and 517-BD, agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.
- E. 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, which is based on an allocation approach. Applicant, the Homeowners Association (HOA), 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, and Applicant, their successors and assigns, including individual lot owners in the subdivision and the HOA may be required to acquire, develop, and incorporate alternative renewable water resources in a permanent water supply plan that provides future generations with a water supply."

CC. Ryan Howser, Project Manager