

Sample



**DECLARATION OF PROTECTIVE COVENANTS**

**BEIERLE MINOR SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS:

Gary L. Beierle and Gene E. Beierle, hereinafter called "Declarants", are the owners of certain real property described as the S1/2 NE/14 NW1/4 Section 14, T. 11 S., R. 65 W., 6<sup>th</sup> P.M. in the County of El Paso, State of Colorado (the "Property"). The Property is being subdivided and the subdivision name will be "Beierle minor subdivision."

The Declarants hereby declare that all of the Property shall be used, improved, occupied, owned, resided upon and conveyed subject to the covenants set forth herein for the purpose of enhancing and protecting the Property. The covenants set forth herein shall run with the Property and be binding on and inure to the benefit of all persons or entities having any right, title or interest in the Property, and said persons or entities shall hereby also be bound by the dedications, restrictions, easements and notes on the Beierle minor subdivision plat, which is recorded at Reception No. 216713868 of the records of the Clerk and Recorder of El Paso County, Colorado, as well as the regulations and ordinances of the County of El Paso, Colorado.

1. Gene E. Beierle owns Lot 1 and Gary L. Beierle owns Lot 2 of the Beierle minor subdivision. Gene E. Beierle is the owner of well permit no. 79750-F and Gary L. Beierle is the owner of well permit no. 79749-F. Upon the sale of such lots by Gene E. Beierle and by Gary L. Beierle, the applicable owner shall convey to the purchaser no less than 300 acre feet of the water and water rights in the Dawson aquifer, as determined by the Colorado Ground Water Commission on March 28, 2016 in Determination No. 3270-BD, as amended on June 16, 2016, minus 1.0 acre feet per year for each year between 2016 and the year in which the lot is conveyed (e.g., an initial sale in 2026 would require that 290 acre feet be conveyed), and an undivided one-half interest in Replacement Plan 3270-BD, approved by the Colorado Ground Water Commission on March 28, 2016 and amended in the Colorado Ground Water Commission's "Amended Findings and Order" dated June 16, 2016 (collectively, "Replacement Plan"). At the time of the initial sale of each lot, Gene E. Beierle shall also assign well permit no. 79750-F to the purchaser of Lot 1, and Gary L. Beierle shall also assign well permit no. 79749-F to the purchaser of Lot 2.

2. The hundred (300) acre feet of Dawson Aquifer water and water rights per lot and the undivided one-half interest in the Replacement Plan ("Water Rights"), as referenced in paragraph 1 above, are intended to provide a 300 year supply for each of Lots 1 and 2 of the Beierle Minor

Subdivision for residential, stock watering, irrigation, and any additional uses provided by the Colorado Ground Water Commission Findings and Order in Case No. 3270-BD. Therefore, the Water Rights shall run with Lots 1 and 2 of the Beierle Minor Subdivision, must be transferred to all successors and assigns of Grantee, may not be separated from transfer of title of each Lot of the Beierle Minor Subdivision, and may not be separately sold, bartered, liened, or encumbered. The Water Rights shall be considered an appurtenance to said Lots of the Beierle Minor Subdivision, shall henceforth be conveyed as such with all future deeds to said Lots, and no separate deed is required to effect a conveyance of the Water Rights. Because the amount of water still available will diminish over time, Declarants are not required to warrant the amount of water in any aquifer, but shall warrant title against all persons claiming title under them (i.e., a special warranty deed which does not warrant title to the amount of water shall be used.)

4. Declarants and all subsequent owners of lots in the Beierle minor subdivision shall be subject to and shall carry out all provisions of the Replacement Plan, a copy of which is attached hereto as Exhibit I and its provisions incorporated herein by this reference, including *without limitation* the following:

- A. Pumping from each Dawson aquifer well may occur only if there is an occupied single-family dwelling on the lot upon which the well is located, so that there will be septic system return flows to replace depletions during the pumping period.
- B. Pumping from each Dawson aquifer well shall not exceed 1.0 acre foot (325,851 gallons) annually.
- C. Allowed water usage is limited to indoor residential use, landscape and gardens irrigation, domestic livestock watering, and replacement purposes.
- D. Each well shall be equipped with a properly installed and maintained totalizing flow meter, and meter readings shall be taken on December 1 of each year, commencing on December 1, 2016, and on January 31 of the following year. The amount of water pumped: (1) cumulatively for each well, commencing on December 1, 2017 (2) on an annual basis from December 1 - November 30 for each well, and (3) and during the winter (December 1 - January 31) shall be reported to the water commissioner or division engineer by February 15 of each year.
- E. Wastewater disposal shall be accomplished through nonevaporative septic systems (septic tanks and leach fields) constructed in compliance with all applicable regulations.

Septic system return flows must equal or exceed the amounts shown as “Annual Depletions” on Exhibit A hereto for each relevant year, with 2017 being equal to year 1 on Exhibit A to the Replacement Plan. The Replacement Plan does not indicate how the amount of septic system return flows is to be determined, so the following procedure shall be used.

I. The amount of water pumped from each well between December 1 and January 31 of the following year shall be determined using meter readings (“Base Winter Use”).

II. For each large animal kept in the subdivision from December 1 through January 31, 620 gallons shall be subtracted from the Base Winter Use, based on consumption of 10 gallons per day per animal. If a large animal is kept in the subdivision for less than the entire time period, that animal’s estimated water usage shall be determined on a pro rata basis, based on ten gallons per day of actual occupancy. This shall be the “Base Indoor Winter Use.”

III. The Base Indoor Winter Use shall be multiplied by six to estimate the amount of water used indoors during an entire year (“Base Annual Indoor Use”).

IV. “Annual Septic System Return Flows” shall be estimated by multiplying the Base Annual Indoor Use by 0.9 to reflect the percentage of the Base Annual Indoor Use which enters the septic system. If the amount of Annual Septic System Return Flows from both lots in combination is less than the required amount as indicated on Exhibit A to the Replacement Plan, then the owner of the lot which has contributed less than half the required septic system return flows must pump that owner’s well and discharge that water onto the lot or at such other discharge point such as to the borrow ditch along Black Squirrel Road or such other location as approved by the water commissioner until such time as the shortfall has been eliminated.

F. Declarants and their successor owners shall be equally responsible for paying for all costs of operating the Replacement Plan. Each lot owner shall be responsible for his own pumping costs. Failure to comply with all terms of the Replacement Plan may result in an order of the Division Engineer to curtail or eliminate pumping of the Dawson aquifer well of the non-complying Owner.

G. When either Lot 1 or Lot 2 is sold, evidence of the sale and notification to the new owner of his responsibility under the Replacement Plan shall accompany the regularly



