

MEMO

To: El Paso County Board of County Commissioners

From: Alan Hill

Date: August 15, 2023

Re: Flying Horse North Water Supply

Hill & Pollock, LLC, represents PRI #2, LLC, with respect to the development of the water supply for the Flying Horse North development. It is our opinion that the water court decrees described below provide a legal supply of 0.7 acre-feet per lot for a 300-year period for the fifty (50) lots for which final platting is sought by PRI #2, LLC.

SUMMARY

Flying Horse North was originally approved for 283 single-family residential lots. It is our understanding that an initial final plat was recorded for the first eighty-three (83) lots. The water supply plan for the initial 283 residential lots in Flying Horse North required three water court decrees: Case Nos. 16CW3190 and 18CW3185¹ (“Augmentation Decrees”). A majority of these 83 lots are currently served by Dawson aquifer wells.

PRI #2, LLC, now seeks final plat approval for an additional fifty (50) lots that were included within the water supply plan for the 283 lots. Specifically, approval is sought for Lots 1-50, Flying Horse Filing 3.

The Augmentation Decrees specifically approve the use of individual Dawson wells for each of the fifty (50) lots described above consistent with the terms and conditions in each decree. The Augmentation Decrees provide a three-hundred-year legal supply of water for each lot.

¹ A decree was entered in Case No. 17CW3209 which added stock watering for up to 300 horses; Flying Horse North anticipated seeking future land use approval for horses on certain lots. The annual maximum demand, with horses, was retained at 198 acre-feet. The fifty lots for which approval is now sought will not include any horses.

ANALYSIS

Case No. 16CW3190 approved a plan for augmentation for 283 individual wells in the not nontributary Dawson aquifer, with augmentation during pumping provided by return flows from individual septic systems. The total amount of annual Dawson aquifer pumping allowed is 198 acre-feet, over 300 years. Case No. 18CW3185 added 13.2 acre-feet per year (100-year aquifer life) from the Dawson aquifer to the plan approved in Case No. 16CW3190.

The Flying Horse Homeowner's Association owns 20,100 acre-feet of groundwater in the not nontributary Dawson aquifer, and 20,400 acre-feet of groundwater in the nontributary Laramie-Fox Hills aquifer. This groundwater was originally decreed in Case No. 94CW023(B), Water Division 1.

In addition, PRI #2, LLC, assumed a lease with the Colorado State Land Board pursuant to which 51,500 acre-feet of groundwater in the not nontributary Dawson aquifer and 18,200 acre-feet of groundwater in the nontributary Laramie-Fox Hills aquifer are available to Flying Horse North. This groundwater was originally decreed in Case No. 04CW098, Water Division 2. An agreement was made between PRI #2, LLC, and the Flying Horse North Homeowner's Association to provide this leased Dawson and Laramie-Fox Hills groundwater from the State Land Board Lease for the 283 lots. On February 27, 2048, this lease will terminate and ownership of this Dawson, and Laramie-Fox Hills groundwater will revert to the Flying Horse North Homeowner's Association

There continues to be an escrow agreement in place with PRI #2, LLC, and the County as parties. PRI #2, LLC, deposited \$200,000 in escrow, through February 2048, to guarantee that the annual lease payments to the State Land Board would be paid.

Approval of the domestic water supply required the use of all the Dawson not nontributary groundwater (71,600 acre-feet). To assure a 300-year supply, although 238 acre-feet per year was available, the augmentation plans approved allowed pumping of 198 acre-feet per year. It was assumed that each lot would require 0.7 acre-feet per year, which results in the total of 198 acre-feet per year. Of this amount, 0.3 acre-feet per year is assumed to be "in-house," and 0.4 acre-feet per year is assumed to be for irrigation of a covenant limited size lawn.

Post pumping depletions would be augmented with Laramie-Fox Hills nontributary groundwater pumped to the affected stream. The Laramie-Fox Hills groundwater decreed in Case No. 94CW023(B) was conveyed to the Flying Horse North Homeowner's Association, and the Laramie-Fox Hills nontributary groundwater leased from the State Land Board (decreed in Case No. 04CW098) the Flying Horse North Homeowner's Association. In addition, the reversion interest to the Laramie-Fox Hills groundwater in the lease was assigned to the Flying Horse North Homeowner's Association. PRI #2, LLC, also obtained 20,800 acre-feet of Laramie-Fox Hills nontributary groundwater decreed in Case Nos. 99CW218 and 00CW079, Water Division 1, underlying land located north of the development, and this Laramie-Fox Hills groundwater was deeded to the Flying Horse North Homeowner's Association (well site easements on this

unaffiliated land were also obtained and deeded to the Flying Horse North Homeowner's Association).

No groundwater will be conveyed to any lot owner. Typically, a pro rata portion of the Dawson groundwater would be conveyed to the lot owner at closing. Sometimes, even a pro rata share of the Laramie-Fox Hills groundwater would be conveyed. Instead, the Flying Horse North Homeowner's Association retains ownership of all the groundwater and issues a certificate to each lot owner allowing the lot owner to use up to 0.7 acre-feet per year from the Dawson aquifer, so long as they comply with the terms and conditions of the water court decrees. In addition, the well permits for the lots will continue to be applied for and held in the name of the Flying Horse North Homeowner's Association. No lot owner has any claim to any Dawson groundwater.

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