

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

First Assistant County Attorney
Diana K. May

Assistant County Attorneys

M. Cole Emmons
Lori L. Seago
Diana K. May
Kenneth R. Hodges
Lisa A. Kirkman
Steven A. Klaffky
Peter A. Lichtman

Amy R. Folsom, County Attorney

This is not the correct document. Please submit the water finding from the Filing 9 PUDSP once it is made.

July 15, 2018

SP-17-012 Flying Horse North Subdivision
Preliminary Plan

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney

NOTE; THE OFFICE OF THE COUNTY ATTORNEY ("OCA") RESERVES THE RIGHT TO AMEND THIS WATER REVIEW IF ADDITIONAL OR DIFFERENT INFORMATION IS RECEIVED OR IF A DETERMINATION IS MADE THAT ADDITIONAL ANALYSIS AND/OR REQUIREMENTS/CONDITIONS ARE APPROPRIATE.

FINDINGS AND CONCLUSIONS:

1. This is a proposal by PRI #2, LLC ("Applicant") for approval of a Preliminary Plan to subdivide approximately 1,418 acres into 283 single family residential lots, plus a golf course, and open space. The property is zoned PUD (Planned Unit Development).

2. Overview. Applicant's water supply is derived from water rights from all four Denver Basin groundwater aquifers—Dawson Aquifer, Denver Aquifer, Arapahoe Aquifer, and the Laramie-Fox Hills Aquifer adjudicated in four different Water Court Decrees with replacements required by two Plans for Augmentation, one of which is pending, thus it has not been approved by the Water Court. Two of the Decrees are for water rights underlying the Lazy H Ranch that lie within both El Paso County and Douglas County. A large portion of the water supply is not currently owned by Applicant, but by the State of Colorado, and now leased by Applicant as a result of a series of assignments from predecessors in title to Applicant. Applicant is required to provide a 300 year supply of water for both its residential and golf course uses, the golf course being an integral part of the subdivision. Applicant will convey or assign to the Flying Horse North Homeowners Association ("HOA") Dawson Aquifer water so that the HOA will own the water and water rights and will issue a Water Certificate to the owner of each lot in the subdivision to use

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



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

to obtain a well permit from the State Engineer for an on-lot well. For this subdivision, given the complexity of the water supply, it is helpful to consider the water demand and the corresponding supply as three different buckets: residential (including on-lot and common area use), golf course use, and augmentation use.

3. Applicant has provided several different sets of figures for its water demand. In its Water Supply Information Summary Form, Applicant estimates its total demand as 373.7 acre-feet per year. Both Applicant's water engineering consultant, Curt Wells, and its water attorney estimated the total demand as 378 acre-feet per year, but each had different demand figures for the different uses. The State Engineer's Office ("SEO") acknowledged these different estimates, but apparently chose to follow the breakdown by Applicant's water attorney; therefore, for the purposes of this water review and the County's consideration of Applicant's estimated demand and its corresponding proposed water supply, the OCA will use the estimates of Applicant's water attorney and the SEO.

4. Applicant estimates its annual water requirements for the 283 lots and the golf course as follows: household use at 84.9 acre-feet, irrigation of residential lots at 81.2 acre-feet, stock watering at 4.1 acre-feet, irrigation of common areas at 27.8 acre-feet, and golf course irrigation at 180.0 acre-feet for a total of 378 acre-feet or 1.33 acre-feet per lot. Applicant will need to provide a supply of 113,400 acre-feet of water (378 acre-feet /yr. x 300 yrs.) to meet the County's 300 year water supply requirement. This is further delineated as 198 acre-feet per year for residential use and 180 acre-feet per year for golf course use, for which Applicant will need to provide a supply of 59,400 acre-feet total for residential use and 54,000 acre-feet total for golf course use to meet the County's 300 year water supply requirement.

5. State Engineer's Review.

a. In a letter dated July 3, 2018, the State Engineer's Office reviewed the proposed water supply for the subdivision based on 283 single-family residential lots on 1,417.8 acres. The State Engineer's Office indicates it reviewed the different estimates provided by Applicant. It stated that the water source will be individual on-lot wells producing from the not nontributary Dawson Aquifer operated in accordance with the plan for augmentation in Case No. 16CW3190. The Engineer acknowledged that Applicant does not own all of the water rights needed for this subdivision, that Applicant owns a portion of the groundwater decreed in Case No. 94CW023(B) under 701 acres (referred herein as the "Wisner Decree" and the "701 acre Parcel"), and a portion of the water is the subject of the Groundwater Production Lease No. OT-109328 between the State Board of Land Commissioners ("SBLC") as Lessor and Applicant's predecessor in interest (David Wisner and Mary Anne Wisner Trust as Lessee) ("State Lease") for the not nontributary and nontributary groundwater underlying 640 acres ("640 acre parcel"), which water rights were decreed in Case No. 04CW098 ("SBLC Decree"). The State Lease terminates on February 27, 2048.

b. The Engineer recognized the following annual amounts of water available under the Wismer Decree and the SBLC Decree:

Dawson	716 AF
Denver	577 AF
Arapahoe	239 AF
Laramie-Fox Hills	386 AF

c. The Engineer discussed the water demand and supply for golf course uses. Well Permit No. 81145-F will be used to irrigate the golf course and clubhouse grounds using 239 acre-feet annually of nontributary Arapahoe Aquifer water transferred to Applicant under the SBLC Decree. The Engineer recognized that the County requires Applicant to show a 300 year supply for the golf course water based on the estimated demand of 180 acre-feet per year, which would total 54,000 acre-feet. Subtracting the 23,900 acre-feet total available from the Arapahoe Aquifer, the Engineer recognized the shortfall of 30,100 are-feet, which applicant proposes to meet using not nontributary Denver Aquifer water [which would come from the SBLC Decree]. The Engineer states that in order to use this not nontributary Denver Aquifer water, a plan for augmentation will have to be approved by the Water Court, and that Applicant's water attorney advised that they seek to have this decree approved within 5 years of the approval of the final plat for the subdivision.

d. The Engineer analyzed the plan for augmentation in Case No. 16CW3190, that it allows for average annual diversions of 198 acre-feet and 59,400 acre-feet total over a 300-year period from the not nontributary Dawson Aquifer. Withdrawals from the Dawson Aquifer will be limited to 0.7 acre-feet/year/lot for 283 lots, which totals 198 acre-feet annually. In-house use is limited to 84.9 acre-feet/year and irrigation for on-lot and open space is limited to 113.1 acre-feet/year, with lawn and garden limited to 5,000 square-feet. The Engineer notes that Applicant has filed to amend this Decree in Case No. 17CW3209 to allow stock watering of up to 300 horses on certain lots; however, no additional pumping over 198 acre-feet allowed by the existing augmentation plan in Case No. 16CW3190 will be allowed in the amended plan for augmentation, which means that lots that will have horses will have a corresponding reduction in allowed acreage for lawn and garden irrigation. The Engineer requires Applicant to provide additional information on how horses will be allocated to lots and how many horses will be allowed per lot.

e. The Engineer discussed the sources of water for the plan for augmentation in Case No. 16CW3190. The Engineer states that Applicant is the owner of 20,800 acre-feet of nontributary groundwater decreed in Case Nos. 99CW218 and 00CW079 ("Lazy H Ranch Decrees"). [Based on information provided to the OCA, Flying Horse Ranch, LLC owns these water rights and will make appropriate conveyances to the Flying Horse North Homeowners Association and the Flying Horse Country Club.] There is 38,600 acre-feet of nontributary groundwater available to Applicant in the Wismer Decree and the SBLC Decree. The 54,900 acre-feet available under these four Decrees is dedicated

to replace the 59,400 acre-feet of post-pumping depletions resulting from pumping the not nontributary Dawson Aquifer for 300 years.

f. While the Engineer determined that the annual demand for the subdivision equals the allowed annual withdrawal of 198 acre-feet under the plan for augmentation for 300 years, she determined that the supply for the golf course will only cover approximately 132 years of the total 300 year demand. The not nontributary Denver Aquifer water to cover the shortfall of 168 years will not be available until the proposed additional augmentation plan is approved by the Water Court.

g. The Engineer made several qualifications to its findings as to adequacy and injury that are re-stated here. Pursuant to C.R.S. § 30-28-136(1)(h)(l), the Engineer is of the opinion that the water supply is adequate and can be provided without causing injury to decreed water rights “provided well nos. 17278-A, 17279, 17280, 75882, and 2132 are plugged and abandoned prior to the subdivision approval. In addition, livestock watering sought in case no. 2017CW3209 shall be allowed once a decree is granted in this case. **However, as requested above, information on the number of horses that will be allocated to each lot must be provided to this office prior to the subdivision approval.** In addition, we note that the proposed water supply for the golf course is adequate to meet the statutory requirement of 100 years, but not the County’s requirement of 300 years, until such time as the proposed augmentation plan for the not nontributary Denver aquifer is approved by the water court.” (Emphasis in **bold** is in original; emphasis by underlining is added).

h. The Engineer provided the following additional opinions:

“Our opinion tha 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.”

“Our opinion that the water supply can be **provided without causing injury** is based on our determination that the amount of water that is legally available on an annual basis, according to the statutory **allocation** approach, for the proposes uses is greater than the annual amount of water required to supply existing water commitments and the demands of the proposed subdivision.” (Emphasis in **bold** is in original).

6. Analysis. The following is an extensive analysis of Applicant’s water demand and proposed water supply based on review of voluminous documents provided by Applicant and Applicant’s water attorney to the OCA.

a. Demand

Applicant, through its water attorney, has provided the following numbers that the State Engineer used and which the OCA will use for this review:

Household use (including in-house and stock watering)	84.9 AF
Irrigation (for residential lots)	81.2 AF
Stock watering	4.1 AF
Irrigation (for common areas)	<u>27.8 AF</u>
On-lot Subtotal	198.0 AF
Golf Course Irrigation	<u>180.0 AF</u>
Total (rounded)	378.0 AF

b. Supply for On-lot, Stock Watering, Common Area Irrigation, and Golf Course Use

Applicant proposes to meet its on-lot, stock watering, common area irrigation, and golf course use demands and a portion of its post-pumping depletions from the following two Decrees: 94CW023(B)(Wismer Decree) and 04CW098(SBLC Decree). To meet its on-lot, stock watering, and common area irrigation use demands of 198.0 AF/YR or 59,400 AF for 300 years, Applicant will convey or assign to the HOA Dawson Aquifer water from both Decrees, which totals 716 AF/YR or 71,600 AF total. The HOA will own the water and water rights and will issue a Water Certificate to each lot owner in the subdivision to use to obtain a well permit from the State. Stated another way, demand and supply are as follows:

<u>DEMAND</u>		<u>SUPPLY</u>
Household Use	84.9 AF/YR	
Irrigation (on-lot)	81.2 AF/YR	201 AF/YR = 20,100AF Dawson
Stock Watering	4.1 AF/YR	<u>515 AF/YR = 51,500 AF Dawson</u>
Irrigation (Common Areas)	<u>27.8 AF/YR</u>	
	198.0 AF/YR	716 AF/YR = 71,600 AF Dawson
198 AF/YR x 300 YRS = 59,400 AF		

Applicant proposes to meet its golf course use demand of 180 AF/YR or 54,000 AF for 300 years by using 239 AF/YR of nontributary Arapahoe Aquifer and 301AF/YR of not nontributary Denver Aquifer waters from the SBLC Decree. Applicant indicates the plan would be to use the Arapahoe Aquifer water for approximately the first 100 - 132 years then the Denver Aquifer water for roughly years 101 or 132 – 300. This range of

years has been used in discussions between Applicant and the OCA with the 100 year for Arapahoe use and 101-300 for the Denver use to address the timeframes generally; however, with 23,900 acre-feet total of Arapahoe supply and 180 acre-feet annual demand, this yields 132 years of supply, hence the more specific figure for timeframes would be years 1 – 132 for Arapahoe use and 132 or 133 – 300 for Denver use. For this review, we use the reference to both general and specific timeframes. Once the Arapahoe water is used, there is a shortfall of 30,100 acre-feet (54,000 AF total demand – 23,900 AF Arapahoe = 30,100 AF shortfall) The needed balance of 301 AF/YR of not nontributary Denver Aquifer water will come from the SBLC Decree to cover the total demand of 54,000 AF for 300 years. Stated another way, demand and supply are as follows:

DEMAND

180 AF/YR

180 AF/YR x 300 YRS = 54,000 AF

SUPPLY

Years 1 – 100/132

239 AF/YR = 23,900 AF Arapahoe

Years 101/133 – 300

301 AF/YR = 30,100 AF Denver

54,000 AF

c. Supply for Augmentation

Applicant proposes to meet its post-pumping depletion demand of 54,900 AF total (198 AF/YR x 300 YRS)(caused by pumping the not nontributary Dawson Aquifer waters for on-lot, stock watering, and common area irrigation uses for 300 years) by using nontributary Laramie-Fox Hills Aquifer (“LFH”) waters pursuant to the terms of the plan for augmentation decreed in Case No.16CW3190. Applicant will use 18,200 AF from the SBLC Decree, 20,400 AF from the Wismer Decree, and 20,800 AF from the Decrees in Case Nos. 99CW218 and/or 00CW079 (Lazy H Ranch Decrees). These two Decrees adjudicate the water rights underlying the Lazy H Ranch in El Paso County and Douglas County. Stated another way, the augmentation requirements are as follows:

1. During 300 YRS Pumping Dawson Aquifer

DEMAND

198 AF/YR X 300 YRS = 59,400 AF

SUPPLY

Septic System Return Flows
of Equal Amount

2. Post – Pumping Depletions

RESIDENTIAL

DEMAND

59,400 AF

SUPPLY

18,200 AF LFH

20,400 AF LFH

20,800 AF LFH

59,400 AF

Augmentation is not required for use of nontributary Arapahoe Aquifer water during the first 100/132 years of pumping. Applicant proposes to meet its estimated post-pumping depletion demand of approximately 306 AF/YR to replace post-pumping depletions caused by withdrawals of not nontributary Denver Aquifer water for golf course irrigation and other related uses from roughly years 101/133-300 by having Flying Horse Ranch, LLC convey to the Flying Horse Country Club from the Lazy H Ranch Decrees a total of 30,630 acre-feet as follows:

GOLF COURSE

DEMAND

Approx. 200 YRS Pumping Denver Aquifer

(Years 101/133 – 300

30,100 AF (shortfall after use up Arapahoe)

SUPPLY

16,700 AF LFH from 99CW218

4,950 AF LFH from 00CW079

8,980 AF Arapahoe from
99CW218

30,630 AF

As indicated, an additional plan for augmentation to allow Applicant to use not nontributary Denver Aquifer water for golf course use is pending; therefore, the County will not know what the final amounts and requirements of that decree will be until the Water Court Judge approves such Decree for plan for augmentation. As the State Engineer has indicated, Applicant does not have adequate water supply to meet the County's requirement of 300 years of water for the golf course uses because it cannot count the not nontributary Denver Aquifer water as available until the Water Court approves the pending plan for augmentation.

7. Surface Water Right for Reservoir.

Applicant has a reservoir and dam for impoundment of the same in the subdivision. This requires a decree for storage of water rights and possibly a plan for augmentation to replace evaporative losses from the surface of the reservoir. When OCA asked about a decree for the storage right, the Dam Safety Engineer in the Colorado

Department of Natural Resources provided a copy of the SBLC Decree 04CW098, which does mention storage as an allowed use, but provides no information as to any requirement regarding replacing surface evaporative losses. Applicant will have to provide additional information.

8. Dependability Issue.

Dependability is a critical issue for the proposed water supply for the subdivision, and both the Planning Commission and Board of County Commissioners will need to make a determination as to whether the dependability of the proposed supply is sufficient. Dependability really means will the proposed water supply work. There are three issues regarding dependability:

a) Uncertainties created by the annual payments required by the State Lease that must be made over 30 years by Applicant;

b) The balance of the not nontributary Denver Aquifer water for the golf course is not available and cannot be used until the pending plan for augmentation is approved by the Water Court; and

c) Additional reporting requirements by the State Engineer's Office requires of Applicant prior to subdivision approval.

a) State Lease

The Groundwater Production Lease No. OT-109328 between the State of Colorado acting through the State Board of Land Commissioners ("SBLC") as Lessor and David Wismer and Mary Anne Wismer Trust as Lessee entered into on November 6, 2014 ("State Lease"), recites that the State issued a patent to the Wismers for 640 acres ("640 acre parcel") on February 27, 1998, but reserved all waters under the 640 acre parcel for 50 years, until February 27, 2048. Under the State Lease, the SBLC leased the water to the Wismer Trust for the remainder of the reservation term, at which time the water rights would revert to the Wismer Trust. The SBLC consented to the assignment of the State Lease from the Wismer Trust to Applicant by the Lease Assignment approved on June 14, 2017. Pursuant to the terms of the State Lease, Applicant is now responsible to make the annual payments required including both a minimum annual payment of \$21,050.00 (Water Opportunity Charge) and a charge of \$1.00 per 1,000 gallons, or \$325.85 per acre foot, for Leased Water produced (Volumetric Charge), which Volumetric Charge is subject to periodic increases beginning in 2024. Pursuant to provisions in the State Lease, if the Applicant defaults on these payment requirements or any other conditions in the State Lease, the Applicant shall peaceably surrender possession of the Leased Water to the SBLC, the water and water rights revert to the SBLC, which then has the right to sell, exchange, or

otherwise dispose of all of any of the Leased Water. This creates a dependability issue for the proposed water supply.,

Escrow Agreement

In order to provide some assurance to the County that Applicant will make the annual payments required by the State Lease, Applicant has drafted an Escrow Agreement that will require them to provide El Paso County with a financial assurance in the amount of \$200,000. Should the Applicant fail to pay the annual payments for the leased water, and if neither the HOA nor the Country Club make the payments, El Paso County would have the right to withdraw funds from the Escrow to make the annual payments to the SBLC to protect the viability of the water supply. The Escrow Agreement requires Applicant to replenish the Funds in the Escrow to the \$200,000 required balance, and if Applicant fails to do so, the Escrow Agreement provides remedies to the County to enforce the Agreement, to include reimbursement of the County's costs for enforcement.

Waiver

Also, since Applicant does not own outright all of the proposed water supply for the subdivision, including waters currently owned by the SBLC under the State Lease, Applicant has requested a waiver of Section 8.4.7.B.3.c.(i) of the El Paso County Land Development Code (2018) requiring all water either be under the Applicant's ownership or that the Applicant has the right to acquire the water rights. A portion of the water supply for the proposed subdivision is not owned by the Applicant but is leased from the SBLC. The lease is dependent upon an annual payment to the SBLC along with a fee for the amount of water that is pumped. Condition No. 6 of the PUD approval required the applicant to provide assurances acceptable to the County to ensure that the Applicant can provide the required water service to the development.

b) Pending Plan for Augmentation

The State Engineer, in its opinion dated July 3, 2018, determined that the proposed supply for golf course use will not meet the County's 300 year requirement. The Engineer stated: "In addition, we note that the proposed water supply for the golf course is adequate to meet the statutory requirement of 100 years but not the County's requirement of 300 years, until such time as the proposed augmentation plan for the not nontributary Denver aquifer is approved by the water court." (Emphasis added). The Engineer further advised that the not nontributary Denver Aquifer water to cover the

shortfall of 168 years will not be available until the proposed additional augmentation plan is approved by the Water Court.

To address this issue, Applicant has agreed to a condition that it will obtain the Water Court's approval of its pending plan for augmentation to be able to use not nontributary groundwater from the SBLC Decree within two years of recording the first final plat for the subdivision.

c) SEO Additional Requirements

In its letter dated July 3, 2018, the Engineer imposed additional requirements that Applicant must meet prior to subdivision approval as discussed more fully above. The Engineer requires the Applicant to plug and abandon certain wells prior to subdivision approval and provide information on the number of horses that will be allocated to each lot prior to subdivision approval.

To address this issue, OCA has included a condition that Applicant must provide written evidence to both Planning and Community Development and the OCA prior to recording the first final plat for the subdivision that the SEO is satisfied that its additional requirements described have been met.

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

10. Therefore, at this time, based on the finding of no injury and sufficiency by the State Engineer, the decreed water rights discussed in detail above that will provide a 300 year water supply to both the residential and golf course uses for the subdivision, and on the requirements/conditions listed below, the County Attorney's Office recommends a finding that the proposed water supply is **conditionally sufficient** in terms of quantity and dependability. Because of the outstanding issues identified above, the County Attorney's Office can only make this recommendation of a finding of **conditional sufficiency** as to water dependability and water quantity. If the Board of County Commissioners agrees to the Escrow Agreement, if the Water Court approves the additional plan for augmentation within two years of recording the first final plat for the subdivision, and if Applicant timely provides evidence that it has satisfied the State Engineer's additional requirements, then upon written proof of these approvals provided by Applicant to the Planning and Community Development Department and the County Attorney's Office, and upon verification of the same, the conditional sufficiency finding will be converted to a full sufficiency finding upon direction from the County Attorney's Office. The El Paso County Health Department shall make a finding as to water quality.

REQUIREMENTS/CONDITIONS:

Plat Notes and/or Documentation are required to address the following:

A. Applicant shall provide proof to OCA and the Planning and Community Services Department ("PCD") prior to recording the final plat that water rights have been conveyed from the original decree holders to Applicant, the HOA and the Flying Horse Country Club, LLC ("Country Club"), as appropriate. **Completed.**

B. Applicant, its successors and assigns, shall create an HOA and advise the HOA and all future owners of these lots of all applicable requirements of the following Decrees: 94CW023(B) (Wisner Decree), 04CW098 (SBLC Decree), 99CW218 and 00CW079 (Lazy H Ranch Decrees) as well as their obligations to comply with the Decree and plan for augmentation in Case No. 16CW3190, including, but not limited to, costs of operating the plan for augmentation which will include the costs for construction and pumping Laramie-Fox Hills Aquifer well(s) on subdivision property and/or on Lazy H Ranch property in order to replace post-pumping depletions, and responsibility for metering and collecting data regarding water withdrawals from said well(s). The Applicant also shall advise the Country Club of its obligations to replace post-pumping depletions caused by pumping not nontributary Denver Aquifer water for golf course use during years 101/133 – 300 as will be required under the pending plan for augmentation. **Completed.**

C. In order to provide legal access to the Lazy H Ranch property to both the HOA and Country Club to construct Laramie-Fox Hills and Arapahoe Aquifer wells, if applicable, to replace post-pumping depletions to the Cherry Creek drainage system, Applicant shall obtain an Easement Agreement from Flying Horse Ranch, LLC to provide such necessary access to both the HOA and Country Club. Applicant shall provide a copy of said Easement Agreement PCD and OCA for review and approval prior to recording the first final plat for the subdivision. **Applicant is in the process of finalizing the Easement Agreement.**

D. Applicant shall assign or convey to the HOA, Applicant's interests, rights, and obligations in the plan for augmentation in Case No. 16CW3190, and create restrictive covenants upon and running with the property which shall obligate individual lot owners and the HOA to carry out the requirements of this plan for augmentation. Such assignment or conveyance shall be accomplished by an appropriate agreement and assignment or conveyance instrument that shall be reviewed and approved by both PCD and OCA prior to recording of the first final plat for the subdivision. **Completed.**

E. Applicant shall make appropriate reservations, conveyances, and assignments of reversionary interests, as applicable, of water to be used to replace post-pumping depletions in both the plan for augmentation in Case No. 16CW3190 for the residential uses, and in the pending plan for augmentation for golf course uses. Applicant

shall cause to be conveyed or assigned to the HOA the following to replace depletions pursuant to the plan for augmentation in Case No. 16CW3190:

208 AF/YR (20,800 AF total) (Lazy H Ranch Decree 99CW218)

204 AF/YR (20,400 AF total) (Wismer Decree)

182 AF/YR (18,200 AF total) (Lazy H Decree 04CW098)

594 AF/YR 59,400 AF total

Applicant shall cause to be conveyed or assigned to the Country Club the following water rights from the Lazy H Ranch Decrees pursuant to the pending plan for augmentation:

167.0 AF/YR (16,700 AF total) LFH (99CW218)

89.8 AF/YR (8,980 AF total) Arapahoe (99CW218)

49.5 AF/YR (4,950 AF total) LFH (00CW079)

306.3 AF/YR 30,630 AF total

Applicant shall convey by recorded bargain and sale deeds and/or assignments of reversionary interests, as applicable, these reserved Laramie-Fox Hills and Arapahoe Aquifer water rights to the HOA and Country Club, respectively, for use in the applicable augmentation plans. Said deeds and assignments shall provide that the water rights shall be appurtenant to the subdivision, to be used for the benefit of all of the lot owners or the Country Club, as applicable, to provide a source of augmentation water to replace post-pumping stream depletions caused by pumping wells in the not nontributary Dawson and Denver Aquifers underlying the subdivision, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered. Applicant shall provide copies of such reservation, conveyance, and assignment instruments that shall be reviewed and approved by both PCD and OCA prior to recording of the first final plat for the subdivision. **Completed.**

F. Applicant desires to convey Dawson Aquifer water to the HOA to own, and in turn, the HOA will issue a Water Certificate to the owner of each lot who can then use the Certificate to obtain a well permit from the State Engineer's Office to drill an on-lot well for their primary supply of water. The Certificate will entitle the owner of each lot to withdraw an average annual amount of 0.7 acre-feet per year of Dawson Aquifer groundwater or a total of approximately 210 acre-feet for a 300 year supply. Applicant, its successors and assigns, has committed to convey by bargain and sale deed or assignment, as appropriate, to the HOA sufficient water rights in the Dawson Aquifer underlying the subdivision to satisfy El Paso County's 300 year water supply requirement: 201 acre-feet per year or 20,100 acre-feet total from the Wismer Decree and 515 acre-feet per year or 51,500 acre-feet total for a total of 716 acre-feet per year or 71,600 acre-feet total from the SBLC Decree. Applicant, its successors and assigns, has committed to convey by bargain and sale deed or assignment, as appropriate, to the Country Club

sufficient water rights in the Dawson Aquifer underlying the subdivision to satisfy El Paso County's 300 year water supply requirement for golf course uses: 239 acre-feet per year or 23,900 acre-feet total of Arapahoe Aquifer water and 301 acre-feet per year or 30,100 acre-feet total of Denver Aquifer water, both from the SBLC Decree, for a total of 54,000 acre-feet. Said deeds and assignments shall provide that the water right 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 form deeds and assignments that shall be reviewed and approved by both PCD and OCA prior to recording of the first final plat for the subdivision. **Completed.**

G. The following requirements/conditions are intended to address the dependability issue.

- 1) Applicant shall agree to, and comply with, the following regarding the Escrow Agreement: As a condition precedent to the Board of County Commissioners hearing the Preliminary Plan and Final Plat, Filing No. 1, of the Subdivision, the Applicant/Developer, the HOA, and the Country Club shall execute the Escrow Agreement and provide said executed copy to the Executive Director, Planning and Community Development Department, with a copy to the County Attorney's Office, no later than ten (10) days prior to the Board of County Commissioners hearing. This Escrow Agreement shall not become binding on the Parties unless and until it is approved by the Board of County Commissioners in an open and public meeting.
- 2) Applicant shall obtain the Water Court's approval of its pending plan for augmentation to be able to use not nontributary groundwater from the SBLC Decree within two years of recording the first final plat for the subdivision.
- 3) Applicant shall provide written evidence to both PCD and OCA prior to recording the first final plat for the subdivision that the SEO is satisfied that its additional requirements described have been met.

H. Prior to hearing the Preliminary Plan by the Board of County Commissioners, Applicant shall provide additional information to PCD and OCA clarifying its storage rights for its reservoir and how any requirements for replacing surface evaporative losses will be addressed.

I. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA to the Development Services 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 first final plat for the subdivision. Said Declaration shall cross-reference the plans for augmentation, the relevant water rights decrees, and shall recite the obligations of the individual lot owners and the HOA under each of these documents. Applicant shall provide a copy of the Certificate of Incorporation of the HOA and the Country Club by the Secretary of State to the Planning and Community Development Department and the County Attorney's Office prior to recording of the first final plat for the subdivision.

J. Applicant, its successors and assigns, shall record all applicable documents including, but not limited to, the relevant Decrees and plans for augmentation discussed herein, the Escrow Agreement, the Easement Agreement, water agreements, assignments of reversionary interests regarding the SBLC Decree and State Lease, bargain and sale deeds regarding the water rights, Declaration of Covenants, By-laws, and Articles of Incorporation in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

K. 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. Applicants, the Home Owners Association, the Country Club, 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 Applicants, their successors and assigns, including individual lot owners in the subdivision, the HOA, and the Country Club 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: Nina Ruiz, Project Manager, Planner II