

County Attorney

Kenneth R. Hodges, County Attorney
719-520-6485
Centennial Hall
200 S. Cascade, Suite 150
Colorado Springs, CO 80903
www.ElPasoCo.com

Board of County Commissioners
Holly Williams, District 1
Carrie Geitner, District 2
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SP-21-7 Peerless Farms

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
April Willie, Paralegal

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal for approval of Peerless Farms, an application by Robert and Wendy Williams (“Applicant”) for a 7-lot subdivision on a parcel of 40 acres of land (the “property”). The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the *Water Supply Information Summary* (“WSIS”), the water demand for the 7 residential lots is estimated to include household use of 1.82 acre-feet/year (0.26 acre-feet/year per lot), 3.50 acre-feet per year of irrigation per year (0.5 acre-feet/year per lot) for a total estimated demand of 5.32 acre-feet per year for the 7 lots or 0.76 acre-feet/year per lot.¹ Based on this total demand, Applicant must be able to provide a supply of 1,596 acre-feet of water (5.32 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

¹ Lot 3 contains a single-family home and one guest house. According to the Report, water is currently provided through an existing well with Permit No. 8141. This well will be abandoned and a new well will be installed. The Report indicates that the guest house is only occupied 25% of the year and because the irrigation demand estimate is double what is required by the El Paso County Land Development Code, the additional water demand posed by the guest house will be covered by the additional irrigation demand.

ASSISTANT COUNTY ATTORNEYS

NATHAN J. WHITNEY
CHRISTOPHER M. STRIDER

STEVEN A. KLAFFKY
TERRY A. SAMPLE

LORI L. SEAGO
ERIKA KEECH

BRYAN E. SCHMID
STEVEN W. MARTYN

DOREY L. SPOTTS
MERI GERRINGER

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from one or more individual on-lot wells withdrawing from the nontributary Arapahoe and Laramie-Fox Hills aquifers as provided in Colorado Ground Water Commission Determination of Water Right No. 4476-BD (“Arapahoe Determination”) and Determination of Water Right No. 4475-BD (“Laramie-Fox Hills Determination”), permitting a total withdrawal of 4.3 acre-feet per year of groundwater from the Laramie-Fox Hills aquifer (for a total of 1,290 acre-feet over 300 years) and 4.53 acre-feet per year of groundwater from the Arapahoe aquifer (for a total of 1,360 acre-feet over 300 years). The proposed water supply for Lots 1, 6 and 7 of Peerless Farms are wells not yet constructed operating pursuant to the Arapahoe Determination. The proposed water supply for Lots 2, 3,² 4 and 5 of Peerless Farms are wells not yet constructed operating pursuant to the Laramie-Fox Hills Determination.

An existing well currently provides water service to two single family homes through Permit No. 8141. The existing well is expected to be abandoned and new individual wells will be installed for all 7 lots.

State Engineer’s Office Opinion

4. In a letter dated June 11, 2024, the State Engineer stated that the proposed water supply for the 7 lots includes 3 new wells constructed in the Arapahoe aquifer operating pursuant to Determination no. 4476-BD, and 4 new wells in the Laramie-Fox Hills aquifer operating pursuant to Determination no. 4475-BD.

Lots 1, 6 and 7 of Peerless Farms will construct wells in the Arapahoe aquifer pursuant to the Arapahoe Determination with the following allowed uses: domestic in-house; irrigation of lawn, garden, and greenhouse; domestic animal and stock watering; commercial; firefighting; and replacement; either directly or after temporary storage in a cistern. The wells are each permitted to draw up to 1.51 acre-feet/year but the current demand for each lot is 0.76 acre-feet per year for a total of 2.28 acre-feet per year.

Lots 2, 3, 4 and 5 of Peerless Farms will construct wells in the Laramie-Fox Hills aquifer pursuant to the Laramie-Fox Hills Determination with the following allowed uses: domestic in-house; irrigation of lawn, garden and greenhouse; domestic animal and stock watering; commercial; firefighting; and replacement; either directly or after temporary storage in a cistern. The wells are each permitted to draw up to 1.08 acre-feet/year but the current demand for each lot is 0.76 acre-feet per year for a total of 3.04 acre-feet per year.

Finally, the State Engineer provided their opinion, “. . . pursuant to section 30-28-136(1)(h)(l), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights **so long as well no. 8141 is plugged and abandoned upon subdivision approval.**”

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for Peerless Farms is 5.32 acre-feet per year. This results in a demand of 1,596 acre-feet for the subdivision for 300 years. Under the Arapahoe Determination, Applicant owns the right to withdraw up to 1,360 acre-feet or 4.53 acre-feet per year of water from the Arapahoe aquifer, and under the Laramie-Fox Hills Determination, Applicant owns the right to withdraw up to 1,290 acre-feet or 4.3 acre-feet per year based on a 300-year allocation for use within the subdivision.

Based on the water demand of 1,596 acre-feet total or 5.32 acre-feet/year (0.76 acre-feet per lot per year) for Peerless Farms and the right to withdraw up to 4.53 acre-feet per year from the Arapahoe aquifer, as well as an additional 4.3 acre-feet total per year from the Laramie-Fox Hills aquifer, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Peerless Farms.

6. The water quality requirements of Section 8.4.7.B.10.g. of the El Paso County Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

7. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a Water Resources Report dated June 3, 2024, the Water Supply Information Summary, the State Engineer's Office Opinion dated June 11, 2024, Determination of Water Right No. 4475-BD entered on January 25, 2023, and Determination of Water Right No. 4476-BD entered on January 25, 2023. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of the Colorado Ground Water Commission Determination of Water Right No. 4475-BD ("Laramie-Fox Hills Determination") and Determination of Water Right No. 4476-BD ("Arapahoe Determination"), including that water withdrawn from the Laramie-Fox Hills aquifer shall not exceed 4.3 combined acre-feet per year and water withdrawn from the Arapahoe aquifer shall not exceed 4.53 combined acre-feet per year.

B. Applicant may create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water determinations for the property. For minor subdivisions such as this, however, in which a replacement plan is not required, Applicant may elect to solely rely on covenant provisions required below and forego creation of an HOA.

C. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of the Laramie-Fox Hills and Arapahoe Determinations.

Covenants shall specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 912 acre-feet of nontributary Laramie-Fox Hills aquifer water pursuant to the Laramie-Fox Hills Determination to satisfy El Paso County's 300-year water supply requirement for the 4 lots utilizing the Laramie-Fox Hills aquifer in Peerless Farms. The Covenants shall further identify that 228 acre-feet (0.76 acre-feet/year) of Laramie-Fox Hills aquifer water is allocated to each of Lots 2, 3, 4 and 5 of Peerless Farms.

The Covenants shall reserve 684 acre-feet of nontributary Arapahoe aquifer water pursuant to the Arapahoe Determination to satisfy El Paso County's 300-year water supply requirement for the 3 lots utilizing the Arapahoe aquifer in Peerless Farms. The Covenants shall further identify that 228 acre-feet (0.76 acre-feet/year) of Arapahoe aquifer water is allocated to each of Lots 1, 6 and 7.

2) Advise of responsibility for costs. The Covenants shall advise the lot owners and their successors and assigns of their obligations regarding the costs of complying with the Determination, which include the installation and/or maintenance of totalizing flow meters.

3) Address future lot conveyances. The following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant:

"The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the Laramie-Fox Hills Determination and or the Arapahoe Determination and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

4) Advise of monitoring requirements. The Covenants shall advise the future lot owners of this subdivision and their successors and assigns of their responsibility for any

metering, data collecting, and reporting that may be required regarding water withdrawals from future wells in the Laramie-Fox Hills and Arapahoe aquifers.

5) Address amendments to the covenants. The Covenants shall address amendments using the following or similar language:

“Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for Peerless Farms pursuant to Determination of Water Right Nos. 4475-BD and 4476-BD. Further, written approval of any such proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County Commissioners, after review by the County Attorney’s Office. Any amendments must be pursuant to the Colorado Ground Water Commission approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such determination.”

6) Address termination of the covenants. The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of Determination of Water Right Nos. 4475-BD and 4476-BD are also terminated by the Colorado Ground Water Commission and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicant and its successors and assigns shall reserve in any deeds of the property Laramie Fox Hills aquifer water in the decreed amount of 912 acre-feet and Arapahoe aquifer water in the decreed amount of 684 acre-feet. Said reservation shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary supply.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Laramie-Fox Hills and Arapahoe aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Laramie-Fox Hills and Arapahoe aquifers underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement. Sufficient water rights are 228 acre-feet (0.76 acre-feet/year x 300 years) of Laramie-Fox Hills aquifer water for each of Peerless Farms Lots 2, 3, 4 and 5 and 228 acre-feet (0.76 acre-feet/year x 300 years) of Arapahoe aquifer water for each Peerless Farms Lots 1, 6 and 7.

Any and all conveyance instruments shall also recite as follows:

For the water rights conveyed for the primary supply (Laramie-Fox Hills and Arapahoe aquifer): “These water rights conveyed are intended to provide a 300-year water supply each of the lots Peerless Farms. The water rights so conveyed shall be appurtenant to each of the respective lots with which they are conveyed, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned, or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title.”

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions, form deeds, and any plat notes required herein 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 the final plat. Said Declaration shall cross-reference Determination of Water Right Nos. 4475-BD and 4476-BD and shall identify the obligations of the individual lot owners thereunder.

G. Applicant and its successors and assigns shall record all applicable documents, including but not limited to Determination of Water Rights Nos. 4475-BD and 4476-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.

H. Applications for well permits submitted by persons other than the Applicant must include evidence that the permittee has acquired the right to the portion of the water being requested.

I. 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. Applicant 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.”

J. Prior to recording the final plat, Applicant shall provide proof that well no. 8141 has been plugged and abandoned.

cc: Ryan Howser, Project Manager, Planner