



Water Town Hall Meeting Summary

Prairie Winds Elementary School

Tuesday, February 28, 2017

Disclaimer: In compiling this summary, care has been taken to be as accurate as possible. However, there may be errors. Accordingly, King's Deer owners reviewing these minutes, especially those who later decide to purchase water, are cautioned that the actual court decree will govern the purchase and use of all additional water rights.

Dan Rivers, Chair of the Water Resource Committee (WRC), called the meeting to order at 7 PM. He explained the purpose of the meeting and introduced members of the WRC and the King's Deer Board of Directors who were present at this meeting. He also explained that this meeting was purely for information purposes about water and that there will be no motions or decisions made at this meeting.

Rivers began by emphasizing that King's Deer HOA does not have any problem with the supply of water to King's Deer residences. The problem on which we are focusing is the amount of water that may legally be pumped from each residential well during a year. This allocation, for many residents, is insufficient to meet their normal domestic water needs. As a consequence, some are drawing more water than their well permit allows, and this brought them unfavorable attention by the Colorado Division of Water Resources.

Rivers summarized the task of the Water Resource Committee which is to facilitate a process that will provide an opportunity for every King's Deer property owner to increase their annual water allocation.

Rivers then offered some background information, starting with a graph which showed the historical water usage in King's Deer for the years 2006 through 2014. In 2006 only about a half of the wells were pumping less than the annual allocation. By 2014 that had risen to about 85 percent. The trend toward increased compliance with the well permit restrictions over those years was because of at least a couple of factors: more annual precipitation and more educational efforts on water conservation by the HOA.

Rivers then displayed a slide which compared the water allocation per well for King's Deer to other communities in the general vicinity. The results showed that the annual water allocation for a King's Deer well is considerably below many other communities.

The King's Deer developers have additional water rights which they have put under the control of a company called Palmer Divide Water Company (PDWC). The company representatives have approached the King's Deer Board of Directors to inquire about the possibility of selling some of those water rights to King's Deer property owners. To evaluate the offer, the King's Deer Board chartered the Water Resource Committee (WRC) last September. The committee spent the past five months working on this issue, meeting with representative of the state Division of Water Resources, county officials, water districts, lawyers, PDWC, and individuals, to assess what the committee deems to be the best opportunity for acquiring water rights in the immediate future.

Although there are potential alternative sources for acquiring additional water for King's Deer owners other than working with PDWC, the alternative sources are burdened with considerable uncertainty for success and fraught with the probability for much higher expenses to the HOA. Therefore, the WRC recommended to the King's Deer Board of Directors that they work with PDWC to develop a mechanism to sell the water rights to King's Deer owners who wish to purchase more rights. Some basic principles set forth to govern the process are:

a. within a specific initial period, all King's Deer owners who wish to buy water will be able to buy water under the same terms.

- b. no property owner who declines to buy water will, in any way, be financially burdened by those who have opted to purchase water.
- c. King's Deer HOA will accomplish all annual reporting of all King's Deer wells, and will continue to accomplish all annual water augmentation for all King's Deer properties.
- d. owners who buy water will enter into an additional covenant with King's Deer HOA, which will run with their land, to ensure the property owner reimburses the HOA for expenses associated with the owner's access to and use of the additional water rights.

Before any water rights can be sold, a decree must be issued by the Colorado water court, stating how much water may be used, how it may be used, and the conditions under which it may be used. The earliest a decree will be issued will be late 2017. After it is issued, PDWC may begin offering water for sale.

Although no firm figures on the sale have yet been set, we understand that we're probably looking at an offer that will be under \$6000 for roughly an additional 0.6 acre-feet. This means that those who buy will have an annual allocation of about an acre-foot (around 325,000 gallons) of water, which should be more than adequate for even the largest families.

The HOA is not in a role of bargaining with PDWC over the terms of the sale. We offer recommendations to PDWC, but the amount of water to be sold, and the cost they will charge is a marketing decision which they must make. The HOA is only facilitating the sale by agreeing to certain terms that will enable the HOA to provide augmentation services on behalf of the buyers so that the court will more likely approve the sale. Each property owner must make their own decision on whether the offer is of value to them, or not.

Following the opening comments, Rivers opened the session to questions.

Q: Do you need a certain number of people committed to purchase water to go forward with this or will this proceed regardless of how many sales will occur?

Rivers: There will not be any commitments to purchase water until after the decree is approved by the court. So, the process will be to draft a decree for the court, get the decree approved, and then the sale can move forward. The decree will not address the price; it will only address the amount of water to be sold, the number of years of pumping allowed, the amount of pumping allowed for each year, the allowed use of the water, and the augmentation requirements associated with the water to be pumped. The price to be charged is a market decision made by PDWC; if they price it too high, they won't sell many units of water and therefore won't recover their expenses for all the legal work accomplished to enable the sale to proceed. Likewise, if priced to low, they run a similar risk of not covering their expenses.

Q: What is the going market rate for water? How firm will be my ownership of the water which I purchase?

Kris Salo (member of the WRC who researched market prices): Many factors have influenced recent sales of water, so it is difficult to say what is a "going" rate for a sale in a particular area. The amount to be sold, the location of the water, the quality of the water, the source of the water, the accessibility of the water and the allowed use of the water all affect the price. Probably other factors come into play as well. We have seen a sale of an acre-foot per year sell for \$29,000. Other sales have been lower.

Rivers: Here we are looking at about 0.6 acre-feet per year for roughly \$6,000. The highest price for water we found was around \$29,000.

Q: Are the water rights attached to the house?

Rivers: The rights run with the land. When you sell your home the new buyer will get the water rights and the augmentation obligations which will be recorded in the county recorders office.

Bart Atkinson (King's Deer property owner and member of Palmer Divide Water Company): I'll be the one who will be handling the sales transaction. In Cathedral Pines, which is another development where I handle a similar sale of additional water to residences, they pay \$9,000 for 0.4 acre-feet under circumstances similar to King's Deer.

Rivers: We are not advocating that any owner buy additional water; that is between the owner and PDWC.

Q: Will the augmentation be an extra fee to be paid by homeowners to the HOA?

Rivers: Correct. However, only those members who buy the extra water will incur the extra expenses associated with the additional required augmentation that the HOA must perform. The added augmentation expense will be based on the amount of the additional water the new buyers actually use.

Q: How will inflation affect our augmentation expenses?

Rivers: There is some uncertainty on the future cost for augmentation, as there is in the future cost of anything. We currently pay Woodmoor Water and Sanitation District about one and a half cents per gallon of water for them to do the augmentation for us now. They have indicated they will be able to support our augmentation needs into the foreseeable future, but the price per gallon will not likely remain the same throughout that time. We are charged a rate that they charge their other customers who, like King's Deer, are not included within the Woodmoor Water and Sanitation District, which is about 50% more than in-district customers pay. This is because customers outside the district are not paying the district taxes to operate the water district. So the surcharge on out of district customers is a way of recovering the cost for service that in-district customers pay through their property tax and tap fee. We anticipate that the added annual expense a property owner who buys this additional water might incur for the additional augmentation not be in excess of \$10 or \$15 per year; but we must first see the decree to know what the augmentation obligation will be before we have a good handle on this number.

38:45

Q: Will the starting negotiation point for negotiating a final sale be the same as was offered a few years ago: \$5,000 for a half acre foot per year?

Rivers: The Water Resource Committee is not in sharp negotiations with Palmer Divide Water Company. We are primarily *facilitating* the opportunity for PDWC to offer and sell additional water to King's Deer property owners. If they set a price too high, they won't have many buyers, and therefore won't recover their legal expenses which they will incur as they get everything in order before they offer the water for purchase.

Bart Atkinson (principal of Palmer Divide Water Company): The market conditions that existed several years ago do not necessarily reflect the current market. This process of setting price and quantity is not a negotiation between PDWC and KD. We will set what we believe is a fair market price for the offered quantity and that will be available to everyone. The quantity currently being considered to offer is somewhat more than was to be offered a few years ago, so it would be reasonable for the price to be somewhat higher.

Q: What is the risk that the water court will not approve the decree which is necessary for us to purchase additional water?

Rivers: There is always some risk in entering a legal proceeding. We have an initial, informal agreement drafted between PDWC and KD which defines some desired terms of the decree and the sale process.

Q: Why do we not have enough water now? How was 0.42 and 0.38 selected? Are we buying 0.6 or are we buying the amount that brings us up to 1.0 acre-feet?

Rivers: The differences are small. We don't know the final numbers now. At this time we are giving you tentative terms of the sale and these might be altered somewhat as lawyers prepare an application for a decree. The actual terms of sale will be clear before anyone is asked to commit to a purchase.

Q: How confident are we in the aquifer water supply and is there any chance we might have to drill our wells deeper?

Rivers showed a map of the Denver Basin in which the aquifers are located. He showed that the amount of water drawn by King's Deer homeowners is less than 0.5 percent of all water in the aquifer. Dawson is a very health aquifer and it does receive some recharging from surface water. By buying more rights now, we not only get the state off our back, we will be the owners of that water which means it cannot be sold to some other buyer to potentially be pumped elsewhere for use.

Potter: The amount of water allocated by the developer back in 1994 was selected by looking at the existing nearby communities, Bent Tree and Arrowwood, and setting the allocation somewhat similar. We did not expect that the development would ultimately have homes as large as are now being built.

Q: Will we be able to irrigate more than 3,000 square feet?

Alchian: The decree that is associated with the water to be sold will define how much additional area can be irrigated as a result of the purchase. We don't have a proposed decree to review, so we don't know at this time how much additional area may be allowed for irrigation.

Atkinson: We anticipate there will be an increase in the area allowed for irrigation by the purchased water, but the decree is only in the initial stages of being drafted so we don't have an answer to that question at this time.

Q: Is the amount of annual augmentation a fixed percent or is it a changing percentage, and is it based on the amount allocated or on the actual amount used?

Rivers: The amount of augmentation is a fixed percent for those who have wells permitted under the 93 decree (most of the houses in Classic) and it is a changing percent for those who have wells permitted under the 94 decree (all of Highlands and a few of the Classic properties). Augmentation amount is calculated from the amount of water you actually use, not on what you are allocated.

Q: We currently have two different allocations for homes in King's Deer. Will that become the same for the two groups after buying additional water?

Rivers: If you have a property that falls under the authority of the 93 decree (Classic) your well permit authorizes you to pump 0.38 acre-feet of water for 100 years. Highlands properties are authorized 0.42 acre-feet for 300 years. If the developer decides to sell a fixed amount of water to all buyers, such as 0.6 acre-feet, there will continue to be the small difference in water allocation to all groups, 0.04 acre-feet per

year or about 13,000 gallons. But if the amount of water being sold is offered to “bring the buyer up to a total allocation of one acre-foot per year” then the total amount of water available to all buyers will be identical. Both scenarios have been mentioned; until PDWC decides which way to go we won’t know the exact terms of the sale. It is important to understand that whichever way PDWC goes, any total near a full acre-foot—about 325,000 gallons—is far more than the vast majority of King’s Deer owners have been using. So, even if the 13,000-gallon difference remains in the final offering, buyers will have an allocation that should be more than ample for their domestic needs.

Q: If you want to purchase water, when will you be able to use it?

Rivers: It takes several months to draft a proposed decree, then have it reviewed, and eventually get through the water court. The earliest we can realistically expect additional water to be available for purchase would be sometime in the fourth quarter of 2017. Water won’t be offered for sale until the decree has been approved by the water court and may be legally drawn from the well by the purchaser.

Q: What happens after the 100 years?

Rivers: Technically your well permit will have expired, but this is a legal concept that is relatively new, coming into effect in 1985, and therefore no well owners have been confronted with what might be a ruling by the water court once the 100 year permit expires. It is possible that if the total water pumped from the well is less than what was allocated to the well, then perhaps it would be reasonable to petition the court to allow for additional years of pumping to extract the unused portion of water. But until 2085, there is unlikely to be any formal legal determination on how the law is to be applied to these limits, and for King’s Deer owners who started pumping in 1995, it will be around 2095 before we become involved. If you purchase the additional water from PDWC, your original allocation will remain in effect and will expire 100 years (Classic) after your original well permit was issued 300 years for Highlands) and your new water purchase will apply upon the date of purchase and will expire 100 years after the date of purchase. The total amount of water you will have available will be the total of what you now have plus the additional quantity you purchase from PDWC.

Q: The Division of Water Resources are having some King’s Deer residents report their meter reading monthly. Landscaping tends to be the factor that causes us to overuse our allocation.

Rivers: This is happening because you have exceeded your allocation for the last three years, 2014-2016. Excessive landscaping, with attendant excessive irrigation needs, may be the primary reason that you are using too much water.

Q: Have you looked elsewhere to buy water, besides PDWC?

A: To acquire water from another source without having to transport it to King’s Deer, we would have to purchase the rights from an adjoining property. A possible candidate is the Wissler Ranch which is the vacant land northwest of King’s Deer. That property does not have “adjudicated” water rights, meaning that there has not been a court decision which establishes how much water they legally have. That would have to be done before the owner would consider selling some or all of the water attached to that property. Probably they would insist King’s Deer pay for that process, and we still wouldn’t have any assurance they would agree to sell once it is adjudicated. Once adjudicated, they would then probably want to retain enough water to ensure they haven’t degraded the overall value of their property, and sell any excess. That would require an analysis by some professionals; we concluded that it is likely the owners would expect King’s Deer to also cover that analysis expense, and again we would have no assurance of a sale to King’s Deer. The remaining steps of the process to finding out if and how much they would sell to King’s Deer would likely follow this same pattern: King’s Deer covering all or much

of the cost without an assurance we would get water in the end. Therefore, the WRC concluded that the “turn-key” offering from PDWC to purchase and start using water was far superior to the prospects of pursuing water from other sources. Again, we, the King’s Deer HOA, are simply facilitating the possibility for you to buy water from PDWC. If you do not want to participate, you don’t have to and you will not be harmed through higher HOA fees when others purchase and you do not.

Q: Have you considered selling different quantities of water instead of one lump sum to fit all needs?

Rivers: There has been some consideration of a smaller allocation with each purchase, but then those who want to have more would have to purchase multiple allocations. Ultimately it is up to PDWC to decide the optimum amount to sell based on their analysis of the community need, the objections they might face by down-stream holders of senior water rights, and the cost associated with the complexity of a decree that allows selling various quantities of water. As facilitators, King’s Deer has been offering our advice and suggestions to PDWC, but they must make the final decision on what is most likely to succeed.

Atkinson: Another factor is the Colorado Division of Water Resources. They receive and analyze the annual water reports from all well users in the state. They closely monitor applications for decrees by the water court, and they strongly encourage the court to keep these relatively simple. Adding complexities such as different share sizes or multiple shares of water to the same buyer adds complexity to their annual reports, and we run the risk of having an application for a decree rejected due to the complexity of reporting. That’s why we have not adopted a concept of small and multiple shares into this proposed plan.

Rivers: Keep in mind that after the original purchase period to buy water from PDWC expires, individual King’s Deer property owners are not prohibited from approaching PDWC and trying to arrange for a sale to suit their own particular needs. However, that may become more expensive than this bulk sale because it may involve a new court decision and new augmentation associated with your own individual purchase.

Q: How does the golf course affect King’s Deer water?

Alchian: Under the same decree that applies to all of King’s Deer Highlands properties, the golf course is also allocated a quantity of water per year. They use about one-third of their annual allocation. The decree requires King’s Deer HOA to do the annual augmentation for the golf course, which we have and will continue to do. The HOA has all the necessary water rights to ground water to accomplish that augmentation.

Q: Will we be able to see the decree before it is approved by the water court.

Alchian: PDWC will file an application for a decree to the water court. There are others who will file with the court as “opposers,” which informs the court that they have a vested interest and may be directly impacted by the outcome of the decision, and they therefore desire to be included among the group who will be involved with establishing the terms of the final agreement. King’s Deer HOA, represented by the Board of Directors, will file as an opposer so that the Board can monitor the terms of the proposed decree as it proceeds through the court and to ensure that no obligation is imposed upon the HOA that we cannot satisfy. The HOA has a vested interest in the outcome primarily because the HOA will most likely be directed by the court decree to perform the annual augmentation on behalf of those King’s Deer property owners who have chosen to purchase the additional water from PDWC. Beyond that, the court is focused on ensuring the senior water rights of downstream users are not harmed by this sale and use of additional water. It is important that the Board, due to its fiduciary duty, be the group of HOA members who solely represents the HOA in this effort. To make it a community exercise will make the process too unwieldy and potentially cause the court to reject either the HOA from the proceedings or possibly reject the entire application for a decree from the court. The goal is to keep this as straightforward as possible to get a

realistic, workable decree to make more water available for purchase, without incurring excessive legal expense. All this work the WRC and the Board of Directors have been doing up to this date has been toward that goal. Any member of the community may come to the monthly Board meetings to monitor the events and decisions

Q: Is there a reserve for the risk of additional risk associated with some other holder of water rights creating some outlandish obligation to be imposed upon us as this application goes through the court?

Rivers: The process allows opposers to explain their concerns to the court. The attorneys for the parties then work to satisfy those concerns and submit conditions to resolve concerns. Experience with these types of augmentation plans shows that the primary concerns tend to be that augmentation water should be placed into a stream system to mitigate a depletion to the stream caused by the additional water pumped from the aquifer, or a disagreement about where the water should be placed into the stream system. Water court decrees affecting King's Deer have shown that the issues tend to be of those type, and we have established solutions in place. From this past experience, we therefore expect minimal active opposition to this next application because of all the work being accomplished in advance. Nevertheless, in the event there is something unanticipated that develops during the process that would be unduly harmful to the HOA, King's Deer HOA can raise it's concern to the court before the final decree is proclaimed to seek a resolution.

Q: How much water does PDWC actually own?

Rivers: At a 100-year rate they have 889 acre-feet in the Dawson aquifer. They propose to sell some of this water to King's Deer owners. They also have Denver and Araphoe aquifer water, some of which will likely be deeded to the HOA for augmentation purposes.

Q: Why 100 years for the additional water rather than 300 years?

Rivers: In 1985 a state law required developers have at least a 100 year supply of water for their proposed development. That law was in effect when the first King's Deer subdivision was created and why those initial properties have well permits that allow pumping for 100 years. Before the rest of King's Deer was developed, El Paso County set its own standard for developers which required the developer to have at least a 300 year supply of water on the land. So, when they developed the remaining part of of King's Deer, the decree stated 300 years of water. This new sale being proposed is not associated with a new development; King's Deer already exists, so the 100- or 300-year rule doesn't apply to the sale. By offering to sell a 100-year supply of water to King's Deer property owners, you will be acquiring the annual amount allowed to be pumped (e.g. 0.6 acre-feet) times the number of years you can pump the water, e.g. 100 years. In other words, they are selling you a volume of water that is 60 acre-feet, and the decree limits you to pumping not more that 0.6 acre-feet each year. If PDWC makes the offer to sell 300 years of water instead of 100 years, they will be selling you 0.6 times 300, or 180 acre-feet of water, but you can still only pump 0.6 acre-feet per year. The cost for that addition water that you or your heirs will own will likely be far higher than the sale price of 100 years of water, but you and your immediate heirs won't be able to benefit from it unless you live at least another 70 or 80 years. So the decision to offer a 100-year supply of water is primarily a practical one in terms of who has to pay for the additional water versus who will likely be the primary beneficiary of the purchase. It might be possible, if you want a 300-year supply, to purchase three shares of water from PDWC and then defer permitting the well for the second and third shares out to the 100- and 200-year points, assuming you plan to hold your property that long.

Q: What happens after the 100 years expire?

Rivers: We don't have any legal ruling from which to draw any conclusion about what will happen; we probably won't know until around 2085, 100 years after the state law was passed. Potentially, if the pumping records show that the total water pumped from your well is less than the total allocated to your well for 100 years, you might be able to petition the court to gain additional years of pumping to extract all of the water you've been allocated. We simply don't know how the courts will handle this when it comes up in about 70 years.

Atkinson: Claims about the developer intentionally "shorting" the community in the amount of water allocated are simply not true. The allocation was based on consultation with experienced professionals at the time about what was a reasonable amount of water for what was expected to be the types of homes in King's Deer. King's Deer turned into a much more upscale community and obviously the water demand is more than anticipated.

The meeting ended at approximately 8:30 PM.