

WATER RESOURCE COUNCIL

Bi-Annual Report

February 2024

The purpose of this report is to address some of the questions we receive from the community and to correct some false and misleading statements that some community members are publicizing, concerning the ownership of the Water Features, the role of the golf course operator (SGM) in the operation and the requirements of the participating HOA's to pay their share of costs to maintain the water delivery system which includes the wells, pumps, pipelines and other facilities used for delivery of water to the Water Features.

1. First and foremost, the association boards are receiving criticism for entering into the agreements to pay for maintaining the Water Features and the water delivery system that provides the water to the Water Features, this is undeserved, since neither current nor previous association boards were a party to the original agreements that established these requirements. The associations inherited the responsibility for administering them when the property was annexed into the associations as a common area.

The agreements for HOAs to participate in the storage of water on HOA properties as an amenity for homeowners and the requirement that participating HOAs would pay their fair share of the costs as long as the HOA continued to use the water delivery system or excess water from the golf course, was made between the developers of individual neighborhoods in Greenhills, The Villas, and The Lakes RV Park and the golf course ownership before the annexation of those neighborhoods to the HOA. So all of the common area properties within the projects that had Water Features were annexed to HOA ownership subject to those agreements and the HOAs have operated under these agreements since the time of their annexation. Members who bought into those projects or neighborhoods chose to do so knowing that it was a common area to be maintained by the associations. The HOA Boards have a duty to maintain the common areas and based on the existing agreements they have never had a right to refuse to pay their share of bills to maintain the water systems as long as they elect to use the golf course's excess water or the water delivery system to fill their Water Features. They only had the option to find another source of water and method of filling Water Features or to discontinue the use of the land as a lake. Following is an excerpt from one of those agreements as an example:

2. WATER FEATURES AND USE OF WATER RESERVES. There are currently five agricultural wells located on the Real Properties. These wells are permitted for use only for the benefit of the golf course and/or the

golf course Water Features. The rights to the five water wells and pumps on the Real Properties are owned by PHEASANT RUN. PHEASANT RUN currently maintains golf course Water Features and holding basins to hold water reserves. The primary purpose of the water reserves is the maintenance and upkeep of the golf course. If PHEASANT RUN determines that additional water storage facilities can be economically accommodated, and so long as the primary purpose of the water reserves is satisfied, PHEASANT RUN will agree to enter into water storage agreements as follows:

a.) Block 8. FBL and HUSSEY and/ or any subsequent developer- owners of Block 8 of Greenhills Estates may, if desired, build a man-made interior lake at their own expense in said Block. An "interior lake" is defined as any body of water designed in, or contiguous to, lots contained within Block 8 which are not on Pheasant Run Golf Course property. FBL and HUSSEY and/ or subsequent developer-owners shall establish an association or sub-homeowners' association ("sub-association") for the purpose of maintaining, repairing and restoring the shoreline and the lake bottom of said interior lake. To the extent FBL and Hussey, and/ or the subsequent developer landowners, desire to utilize the golf course's water reserve to fill the interior lake, PHEASANT RUN will contract with the sub-association to provide, **to the extent available**, excess water reserve to the interior lake. Developer shall pay for constructing the water delivery system from the water well or other water source designated by PHEASANT RUN to the interior lake ("water delivery system"). PHEASANT RUN, therefore, cannot guarantee the continued use or levels of water available. Said water will be provided for holding purposes only and may be retrieved at any time that PHEASANT RUN determines said water reserve is necessary for the maintenance of the golf course and surrounding greenbelt areas. As part of its contract, the sub-association shall be responsible for the payment to PHEASANT RUN for pump and well maintenance, water delivery costs, utility costs, and overhead and management costs incurred therein.

2. Second the golf course operator SGM also receives a lot of undue criticism however they were not a party to the agreements either. The Pheasant Run referred to in those Agreements refers to the company that owns the golf course. However, since SGM was the tenant that was operating and maintaining the golf course they were designated as the contractor to operate and maintain the water delivery system and to bill the participants for their share of costs. Then when the properties with Water Features were annexed into the

associations, the associations elected to keep SGM as the vendor to maintain their Water Features both because of SGM's golf course knowledge and experience in maintaining the golf course Water Features and because they were able to do it at far less cost than quotes from others who bid, since they were already located onsite. Pheasant Run owns only six of the fifteen Water Features in the system and SGM maintains those Water Features and they pay the pro rata share of the cost to deliver water to those Water Features just like other HOAs. SGM also pays 100 percent of the cost to pump water from one of the Water Features onto the golf course and the cost to maintain that pump system. Also, during the water shortage, the course had one dry lake and another at less than half full so they suffered as much or more than other parties on the system. Despite allegations, they do not get paid to drill or repair the wells and they don't own or operate well drilling rigs as that work is bid out to well and pump contractors in the area and the WRC approves those contracts.

3. Developers wanted to create Water Features in the neighborhoods as it increased the value of their lots however, they couldn't drill wells in the city limits and it was not feasible to fill Water Features with City water. Pheasant Run owned five wells but were not licensed to sell water but they could enter into agreements to store excess water on adjacent properties that they could recall in an emergency for use to maintain the golf course. The golf course did not charge for entering into these agreements, but as you can see in the above excerpt from one of the water delivery system agreements, the agreements were made to rightfully protect the golf course's primary purpose to maintain the golf course and the agreements were clear they only applied to excess water over and above what the golf course required to maintain the golf course. The agreements were also clear that the developers and their successors in interest would pay to build the Water Features, to tie into the system, and to pay their fair share of costs to maintain the system and that Pheasant Run had significant control over the system and water distribution. Over time as there were changing boards and management, many different agreements, and the new challenge of a falling water table other issues began to arise. New boards not familiar with the background began to question why they should be paying certain bills and were delaying payments and expressing concerns on what would happen if the golf course went out of business and how they could get more oversight on the system. At the same time, SGM was raising issues that the system as set up required them to advance the payment for bills to contractors but when they billed the HOA's they weren't getting paid promptly and, in some cases, not for over a year. This meant they had to spend an inordinate amount of time collecting payments and educating new boards and managers on the operation, so they wanted a more stable system to approve bills than dealing directly with multiple and everchanging boards and management companies. This prompted talks between certain board members from the different associations and the golf course ownership to address the issues. It took

over two years of working with the presidents and some members of multiple boards, before all boards and golf course owners could all agree to a solution that both addressed the issues while keeping the spirit of the underlying Agreements. The solution included forming a multi-association board with representatives from all participating parties to oversee the water distribution system with the authority to evaluate and pay costs to maintain the system, which became the Water Resource Council (WRC).

4. The WRC is a seven-person board that includes 3 representatives from Greenhills, one (1) representative each from The Villas, The Lakes RV Park, Sierra Golf Management(SGM) , and Pheasant Run LLC the golf course owners. The initial board included the presidents of all three HOAs and two other board members from Greenhills. This board was formed with the intent of creating an entity with more permanent members who would be or become more experienced in the system operation and who were not subject to the ever-changing politics of HOA boards. This gives continuity, while the natural attrition of members for personal reasons offers the opportunity for new members, and to date there have been three board turnovers since its inception. Following are some of the board's accomplishments, clarification of their duties and answers to some of your questions:

A. The first task the WRC faced was researching the agreements that had been recorded against the properties, how they were currently being carried out in practice and working with legal counsel to prepare an agreement that would establish the board, address the issues of the parties and still maintain the spirit of covenants of the underlying agreements. This agreement entitled **Agreement to Grant Easements and Licenses and Amend Covenants to Supply Water and Lake Maintenance** was completed and approved by all HOA boards and recorded on August 6, 2021. Following are some key points of the agreement:

- a. There have been questions about how the boards could enter into this agreement without the vote of the membership. It was a legal opinion that since this agreement did not bind the HOAs any more than the underlying agreements already in place and because any HOA could withdraw from the agreement anytime if they elected to eliminate their Water Features or use the water delivery system to fill their Water Features, there was no obligation to have a vote of the membership.
- b. The Agreement gives the Board the authority to oversee the maintenance of the water delivery system and to determine the priority and allocation of excess water among the Water Features as well as evaluating alternative sources of water. Such actions shall include engaging services, paying costs in connection with maintenance of the system and sending out monthly invoices to all owners of the Water Features. Therefore individual HOA boards have delegated these duties to the WRC along with the authority to act on their behalf to approve and direct payment for maintenance

and replacement of both fixed and variable elements of the water delivery system described in the Agreement without further approval of the HOA Boards. Any cost not covered under provisions of the Agreement would still require approval by a majority of all Lake owners.

- c. It confirmed that the ownership of the 15 Water Features was; Greenhills 6 Water Features plus a portion of a lake shared with the villas; Golf Course 6 Water Features; Villas 1 Water Feature plus a portion of the shared lake with Greenhills, and The lakes RV Park 1 Water Feature. The allocation of basic system costs between owners is based on the lake surface of each owner's Water Features as a percentage of the total surface of all 15 Water Features. The board also identified elements of the system that primarily serve one party more than others and allocates those costs accordingly.
- d. People continue to raise the question of how the associations can pay for repairs and replacement of wells they do not own. The wells are all registered with environmental health in the name of Pheasant Run and their rights to the wells are established either by the ownership of the land where the wells are located or by easements over adjacent properties. The underlying agreements and subsequent annexations created a contractual interest and obligation that legal counsel at the time felt gave the HOAs the right and obligation to pay their fair share of costs.
However, since it was still an issue before the WRC, they negotiated the option for the HOAs to either purchase an interest in the wells or a license to give them the use of the well as long as they were participating in the Agreement. Since the HOAs wanted to retain the ability to withdraw, it made more economical sense for them to obtain a license for the use of the wells which counsel felt provided the necessary ownership interest the HOA boards were seeking and these licenses were granted in the new Agreement.
- e. The other issue concerning what happens if the golf course goes out of business was addressed both by the license agreements granting the HOA's rights to the use of the wells as required to provide water under terms of the Agreement and also granted all parties mutual easements for use of the water delivery system. These provisions allow any members the right to continue to operate all or part of the system in the event any other parties withdraw.
- f. The WRC is also exploring other alternative sources of water for the future including the potential of using reclaimed water like other golf facilities have done throughout the country. During last year's emergencies due to well failures, the WRC was able to acquire water from Chowchilla Water District . This water is only available to us under

certain conditions when they have excess water, however, the WRC is exploring the possibility of improving our priority status for water.

- g. Another question that comes up is why some Water Features are full while others remain low. Although the golf course retains control of the basic water required to maintain the golf course the WRC has been given the authority to make decisions concerning the priority of how excess water for Water Features is allocated and distributed. However, despite allegations, politics has no part in that decision, The number one reason for the disparity is the limitations of the system to distribute the water over such a large area. When working properly our wells can pump more water than the system, which operates primarily by gravity, can distribute to the various Water Features therefore the Water Features closest to the wells that are pumping will usually always be fuller. This condition is more pronounced when we have fewer wells operating. Then in the summer months when the golf course is pumping more water from the lake along the 5th golf hole it may be lower and will also limit water that can be pumped from that lake to the Cascades Lake. Another factor is that we have some Water Features that are leaking and when water is in short supply we may limit water to those Water Features. Assuming we can continue to restore the wells or find alternative water sources, the only solution to balancing the Water Features more consistently is to repair or replace the lake liners have reached their life expectancy which is the responsibility of each lake owner, and to improve the infrastructure to provide more efficient distribution of the water which may not be cost-effective at this time .

In summary, the development of Greenhills, The Villas , The Lakes RV Park and the Golf Course was started by the vision of a single developer who had a beautiful master plan for the project but unfortunately was not able to complete it due to market circumstances at the time and as a result the plan was completed by multiple developers and builders over time so the infrastructure for the Water Features was developed piecemeal between the golf course owners and the different developers which accounts in part for some of the issues we face. However, I think we can all agree it turned out to be a beautiful place to live with amenities that attracted us to live here. Despite some bumps in the road things had worked reasonably well until we went from a period in which we reportedly had an inexhaustible aquifer in the Chowchilla district to a time when a combination of drought years combined with an explosive growth of almond orchards resulted in a falling water table and failing wells. So now after almost 25 years of operating the system with relatively few major component replacements, we are facing the challenges of working with aging infrastructure as well as water shortages. I think when you review the requirements of the underlying agreements as compared to the current Agreement and the oversight it provides for the benefit of all parties, we are in a much

better position to deal with the challenges we are now facing. When we had three wells fail at the same time the WRC was able to reach a consensus to develop and fund a new well in a relatively short period. Without that well we would not have any excess water available to maintain the Water Features. We are all in this together and the WRC is working to overcome these challenges so we can all continue to enjoy the beautiful Water Features throughout our community.

Water Resource Council