

EL PASO COUNTY



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VR-19-4 Claremont Business Park, Lots 1 and 2, Filing 1C
Vacation and Replat

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

FINDINGS AND CONCLUSIONS:

1. This is a vacation and replat proposal by Hammer's Construction, Inc. ("Applicant") to combine Lot 2 from Claremont Business Park Filing 1A and a triangular portion of Tract C from Claremont Business Park Filing 2 and subdivide that resulting combined area of approximately 2.988 acres into 2 parcels, Lots 1 and 2, of what will now be known as Filing 1C, which lots are also known as 1491 and 1495 Woolsey Heights. The property is zoned CS (Commercial Service). Applicant indicates the property will be utilized for warehousing or light industrial use.

2. The Applicant has provided for the source of water to derive from the Cherokee Metropolitan District ("District"). Pursuant to the Water Supply Information Summary ("WSIS"), the annual water demand for the development is 0.63 acre-feet per year, which equates to 0.25 acre-feet for use in each commercial lot, plus a total of 0.13 acre-feet for irrigation. Because Applicant's construction plans show a drip irrigation system, there was a question as to whether Applicant intends to utilize xeriscaping for their landscaping. In the WSIS, Applicant delineates the water uses and demands as follows:

Water use	Water Demand (acre-feet/year)
Commercial Space	0.50
Irrigation	0.13
Total	0.63

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Based on Applicant's figures, the Applicant must be able to provide a supply from the District of 189 acre-feet of water (0.63 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

NOTE: For purposes of this water review, the County Attorney's Office will use the District's 0.64 acre-feet annual figure used in its commitment letters (see Paragraph 3 below). Based on this figure, Applicant must be able to provide a supply from the District of 192 acre-feet of water (0.64 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

3. The General Manager of the District provided updated and separate letters of commitment for Lot 1 and Lot 2 dated April 30, 2020, in which the District conditionally commits to serve each lot in the amount of 0.32 acre-feet annually, which totals 0.64 acre-feet of water per year for the subdivision, which is slightly higher than the demand stated by Applicant in its WSIS. Each commitment is delineated as follows:

Type of Use	Demand (AF/yr)
Domestic	0.25
Irrigation	0.07
Total	0.32

Based on concerns about the Applicant's water use rate for irrigation raised by the State Engineer in its letter dated March 16, 2020, the Applicant, the District, the County Planner, and the State Engineer's Office exchanged a number of e-mails addressing the presumptive use amounts for the claimed uses and for irrigation. In his May 7, 2020, e-mail to Applicant, the District's Engineer, Kevin Brown, advised that the uses presented to the District were for ". . . light industrial/warehousing development so a lower use value per square foot was applied." He further stated "[t]hese buildings would likely be served with a normal ¾ inch meter and this commercial meter size in Cherokee Metropolitan District has an average water use of **0.18 AFY**, less than the amount committed to each of these properties for internal use. The outside use was assigned a water use value based on the irrigated area and a xeriscape watering guide from Northern Water that recommends 1.15 feet of water over the growing season." (Emphasis in original). In e-mail dated May 7, 2020, from Lisa Peterson for Applicant to Kathleen Fuller of the State Engineer's Office, referencing Mr. Brown's justification of the water amounts, she states, "[w]e have read this and agree with the water allocated to the buildings as originally stated per the commitment letters, etc. We do not feel we need to request more water." Ms. Fuller responds to El Paso County Planner Lindsay Darden by e-mail dated May 7, 2020, "[o]ur office finds that the **water estimates are reasonable** based on the additional information. Particularly if you are comfortable comparing this site to warehouses and distribution sites." (Emphasis in original).

In e-mail from the District's Engineer dated April 24, 2020, to Cole Emmons, Mr. Brown clarified that the water the District will provide to this development will be from the

District's general water supply and not from the Kane Water Right. A portion of the Kane Water Right, which water is renewable water, had been allocated to Claremont Business Park developments in the past pursuant to a contract between the District and Claremont Development, Inc. As indicated below, the State Engineer references the Kane Water Right in its letter; however, in each of its April 30 commitment letters, the District clarifies the source: "[t]his water is taken from the District's noncommitted water balance and is not encumbered by any Cherokee Water LLC obligations."

The District's commitment is property and use specific: "[t]his water commitment is hereby made exclusively for this specific development project at this site within the District. . . . If the subject property is re-platted, you must submit a new commitment request prior to submitting the re-plat to El Paso County, which may result in a recalculation of the water demand for the project."

Finally, the District's commitment is only a conditional commitment: "[t]o confirm this commitment you must provide the District with a copy of the final plat approval from El Paso County Development Services within 12 months of the date of this letter. Otherwise, the District may use this allocation for other developments requesting a water commitment."

4. Applicant provided an updated *Water/Wastewater Report for Claremont Business Park Filing No. 1C*, dated April 2020, by M & S Civil Consultants. Attached to the Report is the Nolte Report for Claremont Filing 3 dated 2009. The Report noted that this current proposed site was "previously platted as Lot 2 of 'Claremont Business Park Filing No. 1A', and a portion of Tract C of 'Claremont Business Park Filing No. 2'. A finding of sufficiency for this subdivision was already granted with the recording of the two specified final plats." The Report states the "principal use for the site will be neighborhood commercial and light industrial," and asserts that Applicant's demand at 0.63 acre-feet per year is reasonable for these proposed uses.

5. The State Engineer's Office previously reviewed the supply for what was then identified as Claremont Business Park Filing 1B in a letter dated March 16, 2020. Based on the communications described above in Paragraph 3, the State Engineer's Office issued an updated letter dated May 8, 2020. The State Engineer's Office reviewed Applicant's proposal to subdivide the 2.988 acres of land into 2 commercial lots. The Engineer noted that "Claremont Business Park (CBP) has been the subject of several proposed and revised subdivision filings. . . . Cherokee has dedicated 58 acre-feet/year of water from the Kane Water Right to service the entire Claremont Business Park, which includes Padmark Business Park." [As indicated above, the District will not supply water from the Kane Water Right.]

The State Engineer's Office reviewed this proposal based on the Water Supply Information Summary, the *Water/Wastewater Report* dated February 11, 2020, and based on an estimated demand of 0.63 acre-feet per year. [It appears that the State Engineer either did not receive the updated April 30 commitment letters from the District or did not consider them in its updated letter because she refers to the February 11 commitment letter and the commitment for 0.63 acre-feet per year.] The Engineer made the same notation about the higher irrigation use rate as they did in their March 16 letter: the "standard water use rate as found in the *Guide to Colorado Well Permits, Water Rights, and Water Administration* for lawn and garden irrigation is 0.05 acre-foot per year for each 1,000 square feet, which is significantly higher than the water use rate used for irrigation in the Applicant's estimate." The Engineer again noted that the Applicant intends to use xeriscaping, but did add that the Applicant ". . . referenced documents supporting the estimation of a demand of 0.022 gallons/day/square-foot for warehouse use." The State Engineer described the estimated demand as set forth in the following table:

Use	Amount (square feet)	Water Use Rate (gallons/day/square feet)	Water Use Rate (AF/year/1000 square feet)	Demand (acre-feet/year)
Commercial Space	20,000	0.022	0.025	0.50
Irrigation	8,712	0.013	0.015	0.13
Total				0.63

The State Engineer's Office stated that based on their records "it appears that Cherokee has adequate water resources to serve the estimated demand of 0.63 acre-feet/year for the proposed development." Further, the State Engineer declared that "[p]ursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply for Claremont Business Park, Filing 1C is adequate and can be provided without causing injury to decreed water rights."

Note: As part of its review, the State Engineer's Office noted that the proposal indicated that the "project will collect storm flows in an onsite drainage pond in the southwest corner of the development." Based on that information, the "Applicant should be aware that, unless the proposed improvements to the existing storm water structure can meet the requirements of a 'storm water detention and infiltration facility' as defined in section 37-92-602(8), Colorado Revised Statutes, the structure may be subject to administration by this office."

6. Section 8.4.7(B)(10)(g) of the El Paso County Land Development Code allows for a presumption of water quality when water is supplied from an existing Community Water Supply, which operates in conformance with the Colorado Primary

Drinking Water Regulations and the CDPHE requirements, as clarified by El Paso County Public Health, and is determined to meet the required water quality standards.

7. Analysis: As indicated above, this review is based on the demand the District committed to serve, which is a total of 0.64 acre-feet per year for the development, rather than the 0.63 acre-feet amount Applicant identified in the Water Supply Information Summary. The difference is negligible. The State Engineer determined that Cherokee Metropolitan District appears to have “. . . adequate water resources to serve the estimated demand of 0.63 acre-feet/year for the proposed development.”

8. Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer, the negligible difference between a demand of 0.63 and 0.64 acre-feet per year, the updated commitment letters for each lot and supporting communications by the District's Engineer, the Applicant, and the State Engineer's Office that the demand (including lower irrigation figures) is reasonable given the represented proposed uses, but given the conditional nature of the commitment to serve by the District, and subject to the conditions set forth below, the County Attorney's Office can only recommend a finding of **conditional sufficiency** as to water quantity and dependability for Claremont Business Park, Lots 1 and 2, Filing 1C.

CONDITIONS OF COMPLIANCE:

A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, and specifications set by the District.

B. Applicant must obtain final plat approval (in this case, approval of this Vacation and Replat) and provide evidence thereof to the District within 12 months of the District's updated commitment letters dated April 30, 2020 (approval must be provided by April 30, 2021), to retain the District's water commitment. **If Applicant fails to do so, this recommended finding of conditional sufficiency will be deemed moot and no longer valid. Also, this conditional sufficiency finding is only for the 0.64 acre-feet per year demand and for Applicant's proposed uses of light industrial and warehouses. If that demand amount changes, or if those uses change to uses that require a higher water demand, then this recommended finding of conditional sufficiency will be deemed moot and no longer valid. Once Applicant provides proof to the District that satisfies the District's condition of final plat approval, this conditional finding of sufficiency will automatically convert to a full sufficiency finding.**

cc: Lindsay Darden, Project Manager