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July 6, 2023

SF-22-26 Romens Subdivision
Final Plat

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 the Romens Subdivision, a subdivision application by Romens Living Trust (“Applicant”) for a 7-lot subdivision on a parcel of 34.47 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 subdivision of 34.47 acres into 7 residential lots is comprised of 0.2 acre-feet of indoor household use per home¹ for a total of 1.4 acre feet for the seven lots and up to .207 acre-feet per lot for a total 1.45 acre-feet/year for all 7 lots for domestic, commercial, fire protection, recreational and the watering of stock animals, for a total demand of .407 per lot or 2.85 acre-feet per year total. Based on this total demand, Applicant must be able to provide a supply of 855 acre-feet of water (2.85 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

¹ In calculating estimated water demand, El Paso County has adopted a presumptive water use value of 0.26 acre-feet/lot for residential indoor use in a single-family residence. Applicant has provided no justification or evidence supporting this lower estimated demand. Applicant will therefore be required to update relevant documentation to utilize the presumptive value. Because sufficient water rights are available to each lot to account for the difference in estimated amounts for indoor use, the recommendations of sufficiency in this Water Supply Review are not impacted.

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Proposed Water Supply

The Applicant has provided for the source of water to derive from one or more individual on-lot wells² withdrawing from the not-nontributary Dawson aquifer as provided in Determination of Water Right no. 4278-BD (“Determination”) and Replacement Plan no. 4278-RP (“Replacement Plan”). The Determination allocates 855 acre-feet of water in the Dawson aquifer to the property. The Replacement Plan allows the withdrawal of Dawson aquifer water in the amount of 2.85 acre-feet annually (0.407 acre-feet per lot) for up to 300 years.

The allowed annual amount of groundwater to be withdrawn from the aquifer by all wells operating under the Replacement Plan shall not exceed 2.85 acre-feet. The allowed annual amount to be withdrawn per well is .407 acre-feet for the following beneficial uses: domestic including in-house use; domestic animal watering; irrigation of landscape, gardens and greenhouse; commercial; fire protection; recreational; and the watering of stock animals either directly or after storage. A totalizing flow meter shall be installed on each well.

The approved Replacement Plan has a term of 300 years and requires that return flows from in-house use of groundwater shall occur through individual on-lot non-evaporative septic systems. The Applicant is responsible for ensuring that replacement water is provided to the alluvial aquifer as required by the Replacement Plan. The annual amount of replacement water provided must be no less than the annual replacement requirement on a yearly basis.

State Engineer’s Office Opinion

4. In a letter dated August 3, 2022, the State Engineer stated that “[t]he proposed water supply for the subdivision are individual on-lot wells, including well permit no. 86508-F, constructed in the not-nontributary Dawson aquifer to operate pursuant to Determination of Water Right no 4278-BD and Replacement Plan no. 4278-RP.” The allowed average annual amount of withdrawal shall not exceed 0.407 acre-feet per lot for a maximum of 300 years. The proposed source of water for this subdivision is a bedrock aquifer in the Denver Basin.

Finally, the State Engineer provided their opinion, “. . . pursuant to 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 as long as the uses of the wells in the subdivision are limited to those allowed under Replacement Plan no. 4278-FP.”

Recommended Findings

5. Quantity and Dependability. Applicant’s water demand for Romens Subdivision is 2.85 acre-feet per year for a total demand of 855 acre-feet for the subdivision for 300 years. The Replacement Plan allows for up to seven wells limited to an annual withdrawal of 0.407 acre – feet per well.

² Including Well Permit No. 86508-F.

Based on the water demand of 2.85 acre-feet/year for the Romens Subdivision and the Replacement Plan withdrawals approved in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the Romens Subdivision.

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 January 6, 2022, the Water Supply Information Summary dated February 15, 2023, the State Engineer's Office Opinion dated August 3, 2023, Determination of Water Right no. 4278-BD entered on January 5, 2022, and Replacement Plan no. 4278-RP For Determination of Water Right No. 4278-BD entered on January 5, 2022. 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. 4278-BD and Replacement Plan no. 4278-RP, specifically, that water withdrawn from the Dawson aquifer by each of the proposed seven wells permitted shall not exceed 122.1 acre-feet total. The allowed annual amount of groundwater to be withdrawn from each well is .407 acre-feet (2.85 acre-feet total). Depletions during pumping shall be replaced by individual on-lot non-evaporative septic systems.

B. Applicant must create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water determinations and replacement plans for the property.

C. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, and the HOA regarding all applicable requirements of Determination of Water Right No. 463-BD and Replacement Plan No. 463-RP.

Covenants shall specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 855 acre-feet of non-nontributary Dawson aquifer water pursuant to Determination of Water Right No. 4278-BD to satisfy El Paso County's 300-year water supply requirement

for the 7 lots of the Romens Subdivision. The Covenants shall further identify that 122.1 acre-feet (0.407 AF/year) of Dawson aquifer water is allocated to each residential lot.

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

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants more specifically shall require that each lot in the subdivision have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, 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."

4) 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 Determination of Water Right No. 4278-BD and Replacement Plan No. 4278-RP 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."

5) Advise of monitoring requirements. The Covenants shall advise the HOA, 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 existing and future wells in the Dawson aquifer.

6) 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 the Romens Subdivision pursuant to Determination of Water Right no. 4278-BD and Replacement Plan no. 4278-RP. 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.”

7) 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 no. 4278-BD and Replacement Plan no. 4278-RP 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 Dawson aquifer water in the decreed amount of 122.1 acre-feet (0.407 acre-feet annually) per residential lot. 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 and replacement supply.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson aquifer underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement. Sufficient water rights are 122.1 acre-feet from the Dawson aquifer for each residential lot.

Any and all conveyance instruments shall also recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer): “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year water supply, and replacement during pumping, for each of the lots of the Romens Subdivision. The water rights so conveyed and the return flows therefrom 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 No. 4278-BD and Replacement Plan No. 4278-RP 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 no. 4278-BD, Replacement Plan no. 4278-RP, 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.”

K. Prior to recording the final plat, Applicant shall upload into eDARP:

- 1) an updated Water Supply Information Summary that adjusts the estimated household use to 1.82 acre-feet/year, based on the presumptive use value of 0.26 acre-feet/year/single-family residence, and that adjusts the estimate for other uses accordingly.
- 2) an acknowledgment from the Colorado Division of Water Resources or other proof that the updated WSIS has been provided to that office.

- 3) an updated Water Resources Report that reflects the adjusted demand values in the updated WSIS and correctly identifies the Designated Basin within which this property lies (section 1.0 of the Report).

cc: Ryan Howser, Project Manager, Planner