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SP-25-3 Iron Ridge Subdivision

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by Atticus Land LLC (“Applicant”) to subdivide approximately 85.99 acres into twenty-eight (28) single-family lots (the “property”). The property is zoned RR-5 (Rural Residential), and there is a pending application to rezone to RR-2.5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand for the subdivision is 22.484 acre-feet/year, comprised of 0.26 acre-feet/year for household use for each of the residential lots totaling 7.28 acre-feet/year, 7.924 acre-feet/year for irrigation of 3.214 acres, and 0.616 acre-feet/year for stock watering of 56 animals (0.011 acre-feet per animal), with an additional 6.664 acre-feet for recreation/landscape ponds/commercial or fire protection. Based on this total demand, Applicant must be able to provide a supply of 6,745.2 acre-feet of water (22.484 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from the not-nontributary Dawson aquifer as provided in Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042 (“Decree and Augmentation Plan”). The Decree and Augmentation Plan allocate 10,100 acre-feet of water in the Dawson aquifer to the overlying property after a reduction of 1,200 acre-feet to reflect one future exempt well on an adjacent parcel. The Decree and Augmentation Plan allow the withdrawal of Dawson aquifer water in the amount of 7,227 acre-feet or 24.09 acre-feet annually for up to 300 years for up to 30 wells.

The approved Decree and Augmentation 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 to augment depletions to affected stream systems during pumping. The Applicant must reserve the entirety of water from the Laramie-Fox Hills aquifer (3,780 acre-feet) and 3,447 acre-feet of water from the Arapahoe aquifer for the purpose of replacement of injurious post-pumping depletions.

State Engineer's Office Opinion

5. In a letter dated April 20, 2026, the State Engineer reviewed the proposal to subdivide the 85.99 acres into thirty (30) single-family residential lots. The State Engineer stated that “[t]he proposed water source is individual on-lot wells to be constructed in the Dawson aquifer operating pursuant to the augmentation plan decreed in case no. 2025CW3042.”

The State Engineer stated that “[b]ased upon the above and pursuant to section 30-28-136(1)(h)(II), 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.”

Recommended Findings

6. Quantity and Dependability. Applicant's water demand for Iron Ridge Subdivision is 22.484 acre-feet per year from the Dawson aquifer for a total demand of 6,745.2 acre-feet for the subdivision for 300 years. The Augmentation Plan allows for annual withdrawal of up to 24.09 acre-feet or 7,227 acre-feet per year.

Based on the water demand of 22.484 acre-feet/year for Iron Ridge Subdivision and the Augmentation Plan permitting these withdrawals, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Iron Ridge Subdivision.

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

8. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a Water Resources Report dated April 27, 2026, the Water Supply Information Summary, the State Engineer Office's Opinion dated April 20, 2026, and Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042. 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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042, specifically, that water withdrawn from the Dawson aquifer by each of the proposed 28 wells permitted shall not exceed a total combined annual withdrawal of 24.09 acre-feet. 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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case Nos. 2025CW3042, including the limitations on diversions and use of water for each well and lot, the requirement to meter and record all well pumping, and information on how records are to be recorded.

Covenants shall specifically address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 6,745.2 acre-feet of Dawson aquifer water to satisfy El Paso County's 300-year water supply requirement for the 28 lots of Iron Ridge Subdivision. The Covenants shall also reserve 3,447 acre-feet of Arapahoe aquifer water and 3,780 acre-feet of Laramie-Fox Hills aquifer water to augment the post-pumping depletions for the property. The Covenants shall further identify that 240.9 acre-feet (0.803 acre-feet/year) of Dawson aquifer water is allocated to each of the 28 lots. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary and augmentation water supply.
- 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 plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Laramie-Fox Hills and Arapahoe aquifer wells in the future to replace post-pumping depletions.
- 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 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 the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042 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 and data collecting that may be required regarding water withdrawals from Dawson, Laramie-Fox Hills and Arapahoe aquifers.

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 Iron Ridge Subdivision pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042. Further, written approval of the 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 District Court, Water Divisions 1, 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 adjudication."

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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042 are also terminated by the Division 1 Water Court 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 6,745.2 acre-feet, as well as 3,780 acre-feet of water from Laramie Fox Hills aquifer and 3,447 acre-feet from the Arapahoe aquifer. 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 their successors and assigns shall convey by recorded warranty deed the 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, which amount is 240.9 acre-feet (0.803 acre-feet per year) per lot.

Any and all conveyance instruments shall 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 supply and replacement during pumping for each lot of Iron Ridge 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 shall convey by recorded warranty deed the reserved Arapahoe and Laramie-Fox Hills aquifer water to the HOA. The deed shall recite as follows:

“These water rights are intended to augment the post-pumping depletions of the Iron Ridge Subdivision pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042 and may not be used conveyed, sold, traded, bartered, assigned, or encumbered, in whole or in part, for any other purpose unless authorized by the Division 1 Water Court.”

G. 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 the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042 and shall identify the obligations of the individual lot owners thereunder.

H. Applicant and their successors and assigns shall record all applicable documents, including but not limited to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 2025CW3042, 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.

I. 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.

J. 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."

cc: Joe Letke, Project Manager, Planner