

County Attorney

Kenneth R. Hodges, County Attorney
719-520-6485
Centennial Hall
200 S. Cascade, Suite 150
Colorado Springs, CO 80903
www.ElPasoCo.com

Board of County Commissioners
Holly Williams, District 1
Carrie Geitner, District 2
Stan VanderWerf, District 3
Longinos Gonzalez, Jr., District 4
Cami Bremer, District 5

February 9, 2024

VR-23-19 Seder Subdivision
Vacation and Replat

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
April Willie, Paralegal

WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a vacation and replat proposal by Seder Investment LLC (“Applicant”) to replat one commercial lot into 2 commercial lots on 9.37 acres. The property is currently zoned M CAD-O (Commercial Aviation District Overlay).

Estimated Water Demand

2. Pursuant to the *Water Supply Information Summary* (“WSIS”), the annual demand is 1.32 total acre-feet. This allows for 0.166 acre-feet per year for commercial use and 1.15 acre-feet per year for irrigation. Though the WSIS does not identify the square footage of the commercial uses upon which this figure is based, the commitment letter from Cherokee Metropolitan District (“District” or “Cherokee”) states that the existing commercial use on the property has historically used 0.016 acre-feet/year and bases the estimate for the new commercial use on that amount. Based on this, the Applicant must provide a supply of 396 acre-feet of water (1.32 acre-feet/year x 300 years) to meet the County’s 300-year water supply requirement for the subdivision.

ASSISTANT COUNTY ATTORNEYS

NATHAN J. WHITNEY
CHRISTOPHER M. STRIDER

STEVEN A. KLAFFKY
DOREY L. SPOTTS

LORI L. SEAGO

BRYAN E. SCHMID
STEVEN W. MARTYN

TERRY A. SAMPLE
MERI GERINGER

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from the District. The District currently provides central water service to the existing uses on the property. As identified in the *Water Resources Report* the annual water demand for the development is 1.316 acre-feet per year. Per the *Water Resources Report*, Cherokee's total available water supply is approximately 4,364.8 acre-feet/year, while its existing water commitments total 4,152.1 acre-feet per year before the addition of the proposed development.

4. The General Manager of the District provided a letter dated January 23, 2024, committing to continue to provide water service for the commercial lots within the Seder Subdivision, which is located within the District's boundaries. The District commits to 1.32 acre-feet per year.

The District notes that these commitments are "hereby made exclusively for this specific development project at this site within the District." 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."

State Engineer's Office Opinion

5. In a letter dated October 27, 2023, the State Engineer reviewed the application to subdivide the 9.37 acres into 2 lots. The State Engineer confirmed that the Cherokee Metropolitan District has committed a water supply of 1.3¹ acre-feet/year, which is the water demand identified in the WSIS. Further, the State Engineer states that "[a]ccording to the records of this office, Cherokee has sufficient water resources to supply the development as described above." 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 can be provided without causing injury to decreed water rights, and the supply is expected to be adequate."

Recommended Findings

6. Quantity and Dependability. Applicant's water demand for Seder Subdivision is 1.32 acre-feet per year to be supplied by Cherokee Metropolitan District. **Based on the water demand of 1.32 acre-feet/year for the development and the District's availability of water sources, but given the conditional nature of the District's commitment to serve, the County Attorney's Office recommends a finding**

¹ The Colorado Division of Water Resources provided a letter based on a demand of 1.3 acre-feet per year. The County Attorney's Office will require that prior to recording the final plat, the developer must obtain a new letter or a written acknowledgement from the Colorado Division of Water Resources that they have been advised of the updated amount of 1.32 acre-feet per year.

of conditional sufficiency as to water quantity and dependability for Seder Subdivision.

7. Quality. 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 operating in conformance with the Colorado Primary Drinking Water Regulations unless there is evidence to the contrary.

8. Basis: The County Attorney's Office reviewed the following documents in preparing this review: the *Water Supply Information Summary*, the *Water Resources Report* dated December 29, 2023, the *Cherokee Metropolitan District* letter dated January 23, 2024, and the *State Engineer's Office Opinion* dated October 27, 2023. 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 requirement not be met, the County Attorney's Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

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 a new letter or a written acknowledgement from the Colorado Division of Water Resources that they have been advised of the updated demand amount of 1.32 acre-feet per year.

C. Applicant must obtain final plat approval and provide evidence thereof to the District within 12 months of the District's commitment letter dated January 23, 2024 (approval must be provided by January 23, 2025), 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. 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: Ashlyn Mathy, Project Manager, Planner