July 23, 2018

SF-03-042 Davis Ranch, Filing No. 1 & Filing No. 2

SF-03-043 (Final Plat)

Reviewed by: Paul G. Anderson, Special Water Rights Counsel

Edi Anderson, Paralegal

**FINDINGS AND CONCLUSIONS:**

1. This is a proposal by Michael O’Neil (“Applicant”) for approval of a Final Plat Amendment to allow the use of a “shared well” concept, such that a single well provides a water source to multiple lots, in the Davis Ranch subdivision as explained in Applicant’s Letter of Intent dated 1/14/18. Applicant submitted an application on 4/15/18 to the County Planning and Community Development Department for a plat amendment as to Filing No. 1, though the Letter of Intent appears to contemplate that the proposed “shared well” concept would also be used to supply water to subdivided lots for Filing No. 2. For purposes of this review, it is presumed the application submitted to County Planning will also apply to Filing No. 2. The property is zoned RR-5 (Residential Rural).

It is noted that recorded title information indicates a series of individual lot conveyances all dated October 31, 2017 was made by Michael W. O’Neil to Davis Ranch Homes, LLC, and a separate lot conveyance made by Soco Properties LLC to Davis Ranches Subdivision, LLC. Each of these lot conveyances makes certain title exceptions identified in an attachment to each respective deed, with exceptions being made for a Colorado Ground Water Commission (“Commission”) Findings and Order recorded July 10, 2003 at Reception Nos. 203158840 – 203158842 and the conveyance of water rights under quit claim deeds recorded October 11, 2005 at Reception Nos. 205160679 and 205160681. Additionally, four (4) separate water rights conveyances were made on October 31, 2017 by Mr. O’Neil to Davis Ranch Homes (three conveyances) and by Soco to Davis Ranch Homes (one conveyance) through bargain and sale deeds (water rights), with each conveying 1.65 acre-feet of water from the Arapahoe aquifer and subject to the Commission’s Findings and Order in Determination No. 4-BD dated February 2, 1999 and as modified by the Commission’s Findings and Order dated June 16, 2003 (Reception Nos. 203115840 – 42). It is further noted that Mr. O’Neil is identified as the “property owner” on the application submitted to County Planning and that three people signed the application.

2. Previously the County Attorney’s Office reviewed the water requirements for Filing Nos. 1 and 2 and provided findings, conclusions and requirements in a memorandum dated April 8, 2004, a copy of which is attached hereto as Exhibit A. Per that prior review, the County Attorney recommended a finding that the water supply was sufficient in terms of quantity and dependability to supply the-then proposed Davis Ranch subdivision. Under the original water supply plan, subdivided lots would be served by an existing well and future, individual wells constructed on each lot. Applicant’s Letter of Intent does not indicate that the plat amendment would increase the number of lots or the previously proposed yearly water supply of 0.55 acre-foot per lot; rather, it only requests that the County grant its permission and acceptance of the shared well concept as described in the Letter of Intent. Except as modified by this review, the attached County Attorney’s April 8, 2004 findings, conclusions and requirements are incorporated herein by reference.

1. In electronic mail correspondence to County Planning dated 2/15/18, the State Engineer’s Office indicates it did not need a new Water Supply Information Summary or other related documentation since the estimated annual water requirement is not proposed to be changed for Filing Nos. 1 and 2. The Engineer’s email message indicates that only the shared well agreements for no more than 4 lots per well was needed; it is unclear whether any such agreements were provided to the Engineer for its new review. The Engineer issued its new review letter dated July 3, 2018, essentially confirming its water sufficiency finding from July 24, 2002 but also indicating that the prior review was superseded by the July 3, 2018 review letter based on the information provided.[[1]](#footnote-1) The Engineer’s new review is attached hereto as Exhibit B and incorporated by reference.

4. Applicant’s Letter of Intent explains how the shared well concept would be implemented, i.e., a single well serving multiple lots, and is generally described as follows:

*Lots 1, 2 and 3 of Filing 2, Lot 8 of Filing 1*; a designated location covering 40,000 square feet apparently exists that straddles Lots 2 and 3 on the approved final plat for Filing 2. It is noted that the final plat for Filing 2 was not provided for this review.

*Lots 5, 6 and 7 of Filing 2*; apparently no location has been designated at this time nor any proposed design prepared for this proposed shared well and related facilities, but Applicant proposes to use existing easements and establish additional easement areas in Lots 5 and 6 to reach a 100’ x 100’ area.

*Lots 8 and 9, Filing 2*; Applicant proposes a similar approach as described for Lots 5 and 6 of Filing 2 to establish a new shared well location and facilities.

*Lots 10 and 11, Filing 1*; Applicant indicates a well would be located within the “predetermined area established inside the easements” on Lot 11. The approved Filing No. 1 final plat shows what may be an easement area for “private water facilities and utility easement” in the north, northeast and southeast portions of Lot 11. Applicant goes on to state:

When I purchased Davis Ranch Filings 1 & 2, it (*sic*) was held by Randy Case senior of Case Holdings and County Line Estates. Under the purchase agreement, we have rights to water for each lot in the subdivision and the well that Case kept control of was to provide water for lot 11. Randy Case senior is now deceased and his estate is not settled. If his heirs would agree to not only lot 11 but also lot 10, we would have access to a well that is already drilled and we would, in turn, return the .55 acre feet of water back to Randy Case II for the use of the water.

Regardless of which scenario would be possible, the original water allotment for each lot would not change and each lot owner sharing the ownership of the well would be metered separately for water usage.

Original contact has been made with Randy Case II to discuss the possibility of feeding a second home from this site.

*Lots 12 and 14, Filing 2*; Applicant proposes using a similar approach as described above for Lots 5 and 6 and for Lots 8 and 9 in Filing 2, with a proposed 100’ x 100’ shared well area in the southeast corner of Lot 14.

5. The Letter of Intent concludes by indicating that a joint agreement for shared well ownership by the affected lot owners would specify how funds are collected for future well repairs, and that any tie vote would be decided by the Davis Ranch Homeowners Association (“HOA”) when necessary. Based on the review materials, it is not clear whether an HOA currently exists or whether any shared well agreements exist.

6. Analysis. Though made in the context of discussing a shared well for Lots 10 and 11 of Filing 1, Applicant’s Letter of Intent appears to indicate that “the original water allotment for each lot would not change”. The County Attorney’s April 8, 2004 review made findings based on annual water use estimates provided by County Line Estates, LLC totaling 0.55 acre-foot per lot per year (0.27 acre-foot for household use, 0.25 acre-foot for lawn and garden irrigation, and 0.03 acre-foot for large animal watering) and a total of 15.40 acre-feet annually for all subdivision lots. Using a 15.40 acre-feet per year water demand, a total of 4,620 acre-feet must be available to serve the Davis Ranch subdivision over a 300-year period. Per the Commission’s Findings and Order in Determination No. 4-BD, as modified, that 10,400 acre-feet of Arapahoe aquifer water was available, the County Attorney previously concluded that there should be a sufficient, physical water supply available to the subdivision to meet the County’s 300-year water supply rule. The Engineer’s July 3, 2018 review letter reconfirms the overall water supply sufficiency consistent with the above annual water use estimates and the total water quantity available.

Applicant’s Letter of Intent indicates that a total of 13 lots would operate under the shared well concept. Consistent with the Engineer’s 2/15/18 email correspondence to County Planning, the shared wells would serve less than or equal to four lots per well. Using the 0.55 acre-foot per lot water demand, a total of 7.15 acre-feet would need to be available to serve all 13 lots involved with this plat amendment proposal. Per the title information noted in paragraph 1, a total of 6.6 acre-feet was conveyed to Davis Ranch Homes (by Mr. O’Neil) and Davis Ranches Subdivision (by Soco). Therefore, it appears an additional 0.55 acre-foot of water must be made available to supply all 13 lots under the shared well concept in order to make 0.55 acre-foot of water available to each lot annually. Per the Engineer’s July 3, 2018 review the total quantity of water is more than adequate; and based on Applicant’s representation that “we have rights to water for each lot in the subdivision” under his purchase agreement with County Line Estates and Case Holdings, it is presumed this additional water should be available to Applicant.

7. Therefore, per the above findings and analysis and subject to the requirements listed below, the County Attorney’s Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. The El Paso County Health Department shall make a finding as to water quality.

REQUIREMENTS:

Amended Plat Notes for Filing Nos. 1 and 2 and additional documentation are required to address the following:

A. Prior to County Commission approval, Applicant shall provide written confirmation to the County Attorney’s Office and the County Planning and Community Development Department that the annual water demand per subdivision lot shall not exceed 0.55 acre-foot.

B. Applicant shall provide proof of ownership, or of a right to use, and dedicate an additional 0.55 acre-foot of water per year for use under the shared well concept so that each of the 13 lots identified in the Letter of Intent has a total of 0.55 acre-foot of water available on an annual basis. Alternatively, Applicant shall agree to limit annual water use for each such lot to a total of 0.508 acre-foot and a combined annual total of 6.6 acre-feet unless or until an additional 0.55 acre-foot of water is made available and so dedicated. If Applicant reaches an agreement with Randy Case II under which the existing Case well will supply water for Lot 10, Filing 1, as described in paragraph 4 above, Applicant shall provide the County Attorney and County Planning a copy of the same and record the agreement with the County Clerk.

C. Applicant shall specifically identify on the amended plats the dedicated easements for the shared well locations and associated water utilities/facilities that will serve each of the lots identified in paragraph 4 above.

D. Applicant shall obtain all other required permits and approvals, including new well permits, before constructing and installing any shared well and related water supply facilities and provide copies of such permits and approvals to the County Attorney and County Planning.

E. Shared well agreements between the affected lot owners shall be recorded with the County Clerk, and such agreements shall run with the land to bind all successors in interest.

F. All other requirements identified in paragraphs A – F of the County Attorney’s Office April 8, 2004 review shall be incorporated into the amended plats to the extent they are not modified by or inconsistent with the above requirements.

cc: Nina Ruiz, Project Manager, Planner II

1. The Engineer’s new review letter also notes that individual well permits were issued previously for 13 lots and includes a table listing the issued permit numbers for the various lots identified. While I note differences between the Engineer’s letter and the Letter of Intent in terms of the lots identified, the differences are not relevant to the County’s current sufficiency review. [↑](#footnote-ref-1)