

EL PASO COUNTY

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MS-20-2 Dwire Storage Yard Filing No. 1
Minor Subdivision

Reviewed by: Lori L. Seago, Senior Assistant County Attorney
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FINDINGS AND CONCLUSIONS:

1. This is a minor subdivision proposal by DL Holdings, LLC ("Applicant") for the subdivision of 1 lot, plus 3 tracts (tracts A – C) on 19.362 acres of land (the "Property"). The proposal is intended to mitigate current land development code violations that may be present on the Property. Applicant indicates the 1 lot will be utilized for an office and warehouse buildings. The 3 tracts are described as follows: Tract A is in a no-build floodplain area; Tract B contains a private detention pond; and Tract C is anticipated to be replatted in the future. Future development of the tracts will require separate water review findings and are not included in this review. The Property is zoned I-3 (Heavy Industrial) with CAD-O (Commercial Airport District Overlay).

2. The Applicant has provided for the source of water to derive from the Cherokee Metropolitan District ("District", "Cherokee" or "CMD"). Pursuant to the Water Supply Information Summary ("WSIS"), the annual water demand for the 1-lot development is 3.52 acre-feet per year, which equates to 2.30 acre-feet for industrial use and 1.22 acre-feet for irrigation. Based on Applicant's figures, the Applicant must be able to provide a supply from the District of 1,056 acre-feet of water (3.52 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 a letter dated November 5, 2020 committing to provide water service for the 1 lot Dwire Storage Yard development which is located within the District's boundaries. The District's commitment is delineated as follows:



Type of Use	Demand (AF/yr)
Domestic	2.30
Irrigation	1.22
Total	3.52

The District letter states that “this document will serve is [sic] as a formal Letter of Commitment from the Cherokee Metropolitan District to provide municipal water and sewer services for the DWIRE Storage Yard Development, located at the east side of the intersection of Industry Road and Capital Drive.”

The District’s commitment is only a conditional commitment, as the letter states: “[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. The Applicant provided a *Water/Wastewater Report for Dwire Storage Yard Filing No. 1* by M&S Civil Consultants, Inc. dated November 2020 (the “Report”). The Report details the expected water demands in the amount of 3.52 acre-feet/year. The Report further notes that “CMD water is sourced entirely from groundwater, both renewable and Denver Basin non-renewable sources, in two regions. ... CMD is developing owned water supplies to increase available water and improve flexibility in provision of summer flows. By the end of 2020, these new wells will contribute 458.3 annual acre-feet of capacity to the CMD system for a total of 4,443.0 annual acre-feet of exportable water supplies sourced from alluvial and deep bedrock aquifers.” And finally, with “4,443.0 annual acre-feet of exportable supply and 4,042.5 annual acre-feet of commitments, CMD has a water balance of 400.5 annual acre-feet before the subject development.”

5. In a letter dated October 6, 2020, the State Engineer reviewed the application to subdivide 19.362 acres into 1 lot and 2 tracts, with a water demand of 15.7 acre-feet/year.¹ The State Engineer states that “[a]ccording to the records of this office, Cherokee has sufficient water resources to supply this development as described above.”

Finally, 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.”

¹ Applicant provided an updated proposal, WSIS, and District letter following the State Engineer review. The updated proposal references 1 lot and 3 tracts with an annual water demand of 3.52 acre-feet/year. The State Engineer recommended a sufficiency finding based on the 15.7 acre-feet demand; therefore, the County Attorney’s Office is providing their review pursuant to the State Engineer sufficiency finding which exceeds the actual water demand, but with the requirement that State Engineer must provide an updated sufficiency letter prior to recording the final plat.

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 a water demand of 3.52 acre-feet/year, which the District has committed to serve. The State Engineer determined that Cherokee Metropolitan District has adequate water resources to serve the proposed development.

8. Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer, a water demand of 3.52 acre-feet/year and a commitment from the District in the amount of 3.52 acre-feet/year for a period of 300 years, 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 recommends a finding of **conditional sufficiency** as to water quantity and dependability for the Dwire Storage Yard Filing No. 1 minor subdivision.

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 and provide evidence thereof to the District within 12 months of the District's commitment letter dated November 5, 2020 (approval must be provided by November 5, 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. 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.**

C. Prior to recording the first final plat, Applicant must obtain an updated letter from the State Engineer's Office detailing the correct number of tracts and the updated water demand of 3.52 acre-feet/year as described in footnote 1.

D. Any future development on Tracts A, B, or C will need to be submitted for separate subdivision review, including finding of water sufficiency.

cc: Nina Ruiz, Planning Manager