

EL PASO COUNTY



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SF-21-13 Bridle Bit Ranch Filing No. 1A

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FINDINGS AND CONCLUSIONS:

1. This is a proposal by Nicole Telle (“Applicant”) for a final plat amendment to divide a 10.12 acre parcel into a 2-lot subdivision (the “Property”). The Property is zoned RR-5 (Rural Residential). There is an existing single-family residence on the Property which is served by an existing well.

2. The Applicant has provided for the source of water to derive from individual on-lot wells as provided in the Decree and Augmentation Plan issued to Clifford and Nicole Telle on June 25, 2020, in District Court Water Division 2 Case No. 19CW3039, as consolidated with Case No. 19CW3113 (“Decree” and “Augmentation Plan”). The Decree awarded a vested right to 233 acre-feet of groundwater from the not nontributary Dawson aquifer and a vested right to 834 acre-feet of groundwater from the not nontributary Denver aquifer as further detailed by the State Engineer’s Office in paragraph 3 below. The Augmentation Plan permits withdrawal of 0.458 acre-feet/lot year from each aquifer. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand is 0.916 acre-feet/year for the subdivision, which includes 0.52 acre-feet for household use (0.26 acre-feet/lot), 0.324 acre-feet for irrigation, and 0.072 acre-feet for stock watering. Based on this total demand, Applicant must be able to provide a supply of 274.8 acre-feet of water (0.916 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

3. In a letter dated April 20, 2021, the State Engineer reviewed the submittal to subdivide the 10.12 acre parcel into a 2-lot subdivision. The State Engineer stated that the “source of water is to be provided by two on-lot wells. One will produce from the Dawson aquifer and the second will produce from the Denver aquifer. Both wells will operate pursuant to the augmentation plan decreed in case no. 2019CW3039 (Division 2). The water underlying this property was adjudicated and the applicant is the owner of the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers.” According to the Decree, the uses for the water are “single-family residence, irrigation of lawn and garden and watering of up to four horses or equivalent

livestock.” The following amounts of water were determined to be available under the Property as follows:

Aquifer	Tributary Status	Volume (AF)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	NNT	143	1.43	0.477 ¹
Denver	NNT 4%	834	8.34	2.78
Arapahoe	NNT 4%	421	4.21	1.40
Laramie-Fox Hills	NT	281	2.81	0.937

The State Engineer further states that the Augmentation Plan “allows for diversion of 0.458 acre-feet per year from the Dawson aquifer and 0.458 acre-feet from the Denver aquifer.” The State Engineer notes there is an existing well on the property (well permit no. 116298). Since the Applicant is planning to use the existing well, the Applicant will need to apply for and obtain a new well permit pursuant to C.R.S. § 37-90-137(4). Finally, the State Engineer stated that “it is our opinion that pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.”

4. Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3039 (“Decree” and “Augmentation Plan”). The Decree and Augmentation Plan was issued on June 25, 2020, and approves the plan for augmentation to allow withdrawal from the not nontributary Dawson and Denver aquifers for this subdivision. The aquifers require the use of septic return flows from indoor uses to meet the respective requirements to replace depletions to the stream system during 300 years of pumping. Such return flows may not be otherwise used, sold, traded, or assigned.

The Decree adjudicates 233 acre-feet of not nontributary Dawson aquifer water and 834 acre-feet of not nontributary Denver aquifer water underlying the 10.12-acre Property. Pursuant to the Augmentation Plan, the subdivision may withdraw 0.458 acre-feet/year from each well/each aquifer for a period of 300 years, for use in one single-family residence, irrigation of lawn and gardens and watering of up to four large domestic animals.

Pursuant to the Augmentation Plan, the Applicant is required to provide replacement water from septic and leaching field return flows from in-home use of the groundwater during the pumping

¹ Note: Paragraph 38 of the Decree identifies a vested right to 233 acre-feet of Dawson aquifer water; however, the Augmentation Plan permits withdrawal of 137.4 acre-feet/year and the full amount is subject to Well Permit No. 116298 being re-permitted as a non-exempt well. Any remaining Dawson water not allowed for withdrawal in the Augmentation Plan “shall not be withdrawn for any purpose except pursuant to a separate court-approved plan....”

life of the wells. The Applicant is required to replace 4% of the annual amount from the one Denver aquifer well. The Applicant is required to replace actual stream depletions attributable to pumping the maximum amount from the one Dawson aquifer well. The Augmentation Plan provides that replacement of post-pumping depletions associated with the wells will occur from the Laramie-Fox Hills aquifer. The Augmentation Plan states the “[p]ursuant to C.R.S. §37-90-137(9)(b), no more than 98% of water withdrawn annually from a nontributary aquifer shall be consumed. The reservation of 281 acre feet from the Laramie-Fox Hills aquifer results in 275.4 acre feet of available post-pumping augmentation water, which will be sufficient to replace post-pumping depletions from pumping the Dawson aquifer and Denver aquifer groundwater”

5. Analysis. Applicant’s water demand for Bridle Bit Ranch Filing 1A is 0.916 acre-feet per year for a total demand of 274.8 acre-feet for the subdivision for 300 years. The Augmentation Plan in Case No. 19CW3039 permits withdrawal of 0.458 acre-feet/year (137.4 acre-feet total) of Dawson aquifer water for a period of 300 years and 0.458 acre-feet/year (137.4 acre-feet total) of Denver aquifer water for a period to 300 years. Based on the demand of 0.916 acre-feet/year for the 2-lot subdivision and the Augmentation Plan permitting withdrawals in that amount for a period of 300 years, there appears to be a sufficient water supply to meet the water demands of Bridle Bit Ranch Filing 1A.

6. Section 8.4.7.B.10.g., of the Land Development Code allows that in the absence of evidence to the contrary, a presumption is made that residential subdivisions of 4 or fewer lots will meet the water quality standards.

7. Therefore, based upon the Water Supply Information Summary, a finding of sufficiency and no injury by the State Engineer, the Decree and Augmentation Plan in Water Court Case No. 19CW3039, and based on the requirements below, the County Attorney’s Office recommends a finding that the proposed water supply is sufficient in terms of quantity and dependability. There is a presumption of sufficient water quality.

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of the Decree and Augmentation Plan in Water Court Case No. 19CW3039, specifically, that water use shall not exceed 0.458 acre-feet annually for 1 lot using Dawson aquifer water and 0.458 acre-feet annually for 1 lot using Denver aquifer water and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years, pursuant to the Court’s augmentation plan.

B. The County prefers that when there is an augmentation plan, Applicant create a homeowners’ association (“HOA”); however, alternatively to establishing an HOA, especially for minor subdivisions such as this, Applicant may create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of the Decree and Augmentation Plan in Water Court Case No. 19CW3039, including, but not limited to, ensuring that return flows

by the use of non-evaporative septic systems are made to the stream systems and that such return flows shall only be used to replace depletions and shall not be separately sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require that the lot served by the Dawson aquifer well and the lot served by the Denver aquifer well will have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system. In addition, the Covenants shall advise future lot owners of this subdivision and their successors and assigns of their obligations regarding costs of operating the plan for replacement, including all monitoring and accounting. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the plan for replacement, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 137.4 acre-feet of not nontributary Denver aquifer water on Lot 1, 137.4 acre-feet per lot of not nontributary Dawson aquifer on the existing Lot 2, and 281 acre-feet total of Laramie-Fox Hills aquifer water to be used for post-pumping depletions pursuant to the Augmentation Plan in Case No. 19CW3039, to satisfy El Paso County's 300-year water supply requirement for the 2 lots of Bridle Bit Ranch Filing 1A.
- 2) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace 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 served by a Dawson or Denver well shall have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system. 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."
- 3) 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 plan for augmentation in Decree and Augmentation Plan in Case No. 19CW3039 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.”

4) The Covenants shall advise 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 wells in the Dawson and Denver aquifers, and Augmentation Plan requirements regarding the Laramie-Fox Hills aquifer.

5) 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 Bridle Bit Ranch Filing 1A pursuant to the Decree and Augmentation Plan in Case No. 19CW3039. 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 a Decree from the Colorado Water Court 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.”

6) The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of the Decree and Augmentation Plan in Case No. 19CW3039 are also terminated by the Colorado Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

C. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property the amount of at least 0.458 acre-feet annually from the Dawson aquifer (137.4 acre-feet total) and 0.458 acre-feet annually from the Denver aquifer (137.4 acre-feet total) for the subdivision for a period of 300 years for a total of 274.8 acre-feet for the 2-lot subdivision. 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. Applicant shall convey by recorded warranty deed the reserved Dawson and Denver aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants or other such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney’s Office prior to recording the minor subdivision plat.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the Dawson and Denver aquifers: "These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each of the identified lots of Bridle Bit Ranch Filing 1A. 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."

D. Pursuant to the Decree and Augmentation Plan, Applicant shall recite that this water shall not be separated from transfer of title to the Property. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

E. Applicant and its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the Denver aquifer or the Dawson aquifer, pursuant to the Decree and Augmentation Plan in Case No. 19CW3039 underlying the respective lots to satisfy El Paso County's 300 year water supply requirement. Denver aquifer requirements are 137.4 acre-feet per lot (0.458 acre-feet/year x 300 years) and Dawson aquifer requirements are 137.4 acre-feet per lot (0.458 acre-feet/year x 300 years). Applicant and its successors and assigns shall convey by warranty deed to individual lot owners sufficient water rights in the Laramie-Fox Hills aquifer to account for post-pumping depletions as required by the Augmentation Plan. Said conveyance instruments shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for the primary supply and replacement during pumping for the respective lots. Applicant shall provide form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions 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 Decree and Augmentation Plan in Case No. 19CW3039 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, the Decree and Augmentation Plan in Case No. 19CW3039 and 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. Applicant shall apply for and obtain a new well permit pursuant to C.R.S. § 37-90-137(4) as required by the State Engineer's Office and must operate all wells in accordance with the terms and conditions of any future well permits.

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."

cc: Ryan Howser, Planner II