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March 22, 2018

Ms. Kari Parsons
El Paso County Development Services Dept.
e-mail: kariparsons@elpasoco.com

Mr. Cole Emmons
El Paso County Attorney's Office
e-mail: coleemmons@elpasoco.com

RE: Abert Ranch Preliminary Plan

Dear Ms. Parsons and Mr. Emmons:

In a letter to Ms. Parsons dated September 5, 2017, a copy of which was first forwarded to me on March 21, 2018, Joanna Williams of the State Engineer's office indicated that the Water Supply Information Summary I had provided for this project provides that it indicates that 0.29 acre feet annually per lot in the proposed Abert Ranch subdivision can be used for "unspecified uses." She also wrote that:

> ...the Applicants must ensure that the other specified or unspecified uses are allowed by the decree in consolidated case nos. 2015CW2153 (Division 1) and 2015CW3062 (Division 2). We recommend that Applicants provide clarification to the county on all the proposed uses within the subdivision prior to the subdivision approval.

Paragraph 14 of the decree in the above-referenced consolidated cases provides in relevant part as follows:

> Uses of water on such lots are expected to be, *but shall not be limited to*, some or all of the following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools, and decorative uses such as decorative ponds and fountains, and augmentation through septic system return flows. (Emphasis added)

I wish to make two points.

First, the plan for augmentation was intentionally drafted so that presumed landscape irrigation return flows of no less than 0.18 acre foot per lot per year would be sufficient to replace depletions during the entire 300 year pumping period. Thus, no matter what use is made of the allowable 0.8 acre foot per lot per year, whether it is barely consumptive or totally consumptive, the replacement requirements of the plan for augmentation will be satisfied during the pumping period so long as there is an occupied residence on any lot using a Dawson aquifer well for its water supply.

Second, if a lot owner were to file a well permit application which requested a use which the State Engineer determined to be speculative, or for a use which is not beneficial, the State Engineer would be required to deny such a permit. Pursuant to *East Cherry Creek Valley Water and Sanitation Dist. v. Rangeview Metropolitan Dist*., 109 P.3d 154, 158, (2005): "...a structure to withdraw nontributary ground water may not be constructed without satisfying the state engineer of a non-speculative, beneficial use to which the water will be put...."[1]

Thus, though the "other" uses specified in the indented language above are indeed allowed, the "other uses" to which a lot owner may put such water are not limited to those listed in the decree; they may be for any use, provided that such uses are both non-speculative and beneficial.

Although the list of anticipated uses indicated in the decree is fairly long, I have had clients who have utilized water produced pursuant to an augmentation such as this one for dog breeding and training facilities, for temporary dog kenneling, and for drip irrigation of hops. Subject to the covenants of a subdivision, I could envision a lot owner using a significant portion of the owner's 0.8 acre foot annual portion for a micro-brewing process, or for small-scale greenhouse for growing vegetables for commercial uses. All these examples are allowed by the decree. So long as the property is being used as a full-time residence and the annual withdrawals do not exceed 1.0 acre foot annually per lot, all uses which both non-speculative and beneficial should be permitted.

Please let me know if this information does not sufficiently answer your questions, and I will respond as quickly as I can.

Sincerely yours,

/s/

Henry D. Worley

c: (e-mail only)
Joanna Williams
Edi Anderson
Jerry Hannigan

[1] Though the case refers to only nontributary water, the actual practice by water attorneys, the courts, and the State Engineer has been to apply the provisions of SB 5 (C.R.S. 37-90-137 (9)) to water which is "not nontributary" as well as to water which is nontributary.