

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**Kenneth R. Hodges, County Attorney**

### Assistant County Attorneys

Lori L. Seago  
Steven A. Klaffky  
Mary Ritchie  
Bryan E. Schmid  
Nathan J. Whitney  
Christopher M. Strider  
Terry A. Sample  
Dorey L. Spotts  
Steven W. Martyn

August 2, 2022

SF-21-39 Akers Acres Subdivision No. 1a  
Final Plat

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

## WATER SUPPLY REVIEW AND RECOMMENDATIONS

### Project Description

1. This is a final plat proposal by Galloway & Company, Inc. for D & K Akers, LLC ("Applicant") for replat of Lot 3 of Akers Acres Subdivision 1 into two lots: Lot 3a (4.26 acres) and Lot 3b (5.00 acres) (the "property"). The property is currently zoned M CAD-O (Industrial – Commercial Airport Overlay District).

### Estimated Water Demand

2. Pursuant to the *Water Supply Information Summary* ("WSIS"), the proposed total demand for the redevelopment is 2.20 acre-feet/per year which reflects 1.01 acre-feet for commercial use, plus 0.67 acre-feet for irrigation as well as 0.5 acre-feet for existing use due to an existing building on the property (Lot 3a).<sup>1</sup> Based on the total demand, Applicant must be able to provide a supply of 660 acre-feet of new water supply (2.20 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

### Proposed Water Supply

3. The Applicant has provided for the source of water to derive from the Cherokee Metropolitan District ("District" or "CMD"). As detailed in the *Water Provider's Supplementary*

<sup>1</sup> Note: There appears to be a rounding difference on the WSIS. The WSIS shows the new water demand as 1.68 AF, plus existing use of 0.50 AF which totals 2.18 AF; however, the total water demand indicated on the WSIS is 2.20 AF. The *Water Resources Report* and the District letter both reference a rounded-up amount of new water demand of 1.7 acre-feet; therefore, the balance of this review will use the 1.7 acre-feet water demand (total amount of 2.20 acre-feet).

*Report for Proposed Redevelopment of 2875 Akers Drive* dated May 6, 2022 (“*Report*”), the District’s water supply is sourced entirely from Denver Basin sources. The *Report* indicates that “[w]ith 4,443.0 AFY of exportable supply and 4,318.9 AFY of commitments, CMD has a water balance of 124.1 AFY before the subject development. After commitment of 1.7 AFY to this development, the District will have 122.4 AFY remaining for additional commitments.”

4. The District’s General Manager provided a letter of commitment for the 2875 Akers Drive subdivision dated April 27, 2022, in which the District committed to providing water service for the two proposed lots at 2875 Akers Dr. in the amount 1.01 acre-feet/year, plus irrigation in the amount of 0.67 acre-feet/year, for an annual water requirement of 1.7 acre-feet/year of new water demand, along with 0.5 acre-feet/year of an existing commitment for a total of 2.2 acre-feet/year.

Finally, the District’s commitment is only a conditional commitment; therefore, the District’s letter noted “[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 July 11, 2022, the State Engineer reviewed the proposal to subdivide the 10 +/- acre parcel into two approximately equal sized lots. The State Engineer stated that the proposed development is to be served by Cherokee Metropolitan District. A letter of commitment dated April 27, 2022 from Cherokee was provided with the materials and indicated that 1.7 acre-feet are committed to the proposed subdivision. Finally, “[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 Akers Acres Subdivision No. 1a is 2.2 acre-feet per year to be supplied by the Cherokee Metropolitan District.

**Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer, a water demand of 1.7 acre-feet/year and a commitment from the District in the amount of 1.7 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 below, the County Attorney’s Office recommends a finding of conditional sufficiency as to water quantity and dependability for Akers Acres Subdivision No. 1a.**

7. Quality. The water quality requirements of Section 8.4.7.B.10 of the Code must be satisfied. Section 8.4.7.B.10.g. of the Code allows for the presumption of acceptable water quality for projects such as this where water is supplied by an existing Community Water Supply

operating in conformance with 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* provided May 17, 2022, the *Water Resources Report* dated May 13, 2022, the *Cherokee Metropolitan District* letter dated April 27, 2022, and the *State Engineer Office's Opinion* dated July 11, 2022. 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 requirements 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, limitations, 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 April 27, 2022 (approval must be provided by April 27, 2023), 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.**

cc. Ryan Howser, Project Manager, Planner III