

EL PASO COUNTY



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MS-21-4 Warner Minor Subdivision

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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by Brian Warner ("Applicant") for a minor subdivision of 4 single-family lots on 39.859 acres (the "property"). Lots 1 and 2 will encompass 5 acres, lot 3 will encompass 20 acres, and lot 4 will encompass 10 acres. There is currently an existing home and well (Permit No. 85571-F) on Lot 3. The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the subdivision demand is 1.0 acre-feet per residential lot, comprised of 0.26 acre-feet for household use and up to 0.74 acre-feet/lot for uses which may include irrigation, watering of stock animals, and commercial uses, for a total of 4.0 acre-feet per year for the subdivision based on a total of 4 lots. Based on the total demand, Applicant must be able to provide a supply of 1,200 acre-feet of water (4.0 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement for the residential lots.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from individual on-lot wells as provided in Colorado Ground Water Commission ("Commission") Findings and Order No. 4025-BD ("Determination") and Replacement Plan No. 4025-RP ("Replacement Plan"), both approved on October 22, 2020. The Determination detailed the available amount of water underlying the 40 acres of land as 3,777 acre-feet from the Dawson aquifer, with beneficial uses to include in-home use, irrigation, domestic animal watering, and commercial. The Replacement Plan permits withdrawal from the Dawson aquifer of 4.0 acre-feet/year for the subdivision, based on 1.0 acre-feet of water to

be withdrawn from each of 4 wells on 4 residential lots.¹ The Replacement Plan requires the use of septic return flows for replacement water through the installation and use of a septic system on each residential lot which has a well.

4. Applicant provided a *Water Resources Report for the Warner Subdivision* dated September 27, 2021 (the “*Report*”). The identified water rights underlying the property are summarized as follows:

Aquifer ²	Total Withdrawal (acre-feet)	Annual Average Withdrawal 100 years (acre-feet)	Annual Average Withdrawal 300 years (acre-feet)
Dawson	3777	37.77	12.59
Denver	2520	25.20	8.4
Arapahoe	1770	17.70	5.9
Laramie Fox Hills	1110	11.10	3.7

As described in the *Report*, the Commission awarded the Applicants a “vested right to 3,777 acre feet of groundwater from the not-nontributary Dawson aquifer underlying Applicants’ 40-acre property for in-home, irrigation of lawn and garden, domestic animal watering and commercial uses. The replacement plan specifies that up to 4.0 acre-feet annually may be pumped for 300 years from the Dawson aquifer”

Based on the water demand of 1,200 acre-feet for a period of 300 years and Replacement Plan No. 4025-RP authorizing withdrawal in the amount of 4.0 acre-feet/year (1,200 acre-feet total), there is an adequate water supply available for the subdivision.

State Engineer’s Office Opinion

5. In a letter dated June 29, 2021, the State Engineer reviewed the proposal to subdivide the 39.86-acre parcel into 4 single-family lots. The State Engineer stated that the water supply would be provided by Determination No. 4025-BD and Replacement Plan No. 4025-RP reflecting groundwater underlying the 40-acre property and which allows "average annual withdrawal of 37.77 acre-feet for 100 years [12.59 acre-feet/year for 300 years] from the Dawson aquifer for in home use, irrigation of lawn and garden, domestic animal watering and commercial use.” The Replacement Plan “allows an average annual withdrawal of 1.0 acre-foot [sic] for 300 years from the Dawson aquifer for each of four residential lots (4.0 acre-feet total).”

¹ Note: The Replacement Plan and the State Engineer’s Office letter dated June 29, 2021 stated Applicant’s proposal to divert 0.25 acre-feet/year for in-house use for each of the 4 lots and 0.75 acre-feet/year/lot combined for irrigation, stock watering, and commercial use. The WSIS provided by the Applicant stated that 0.26 acre-feet/year/lot would be withdrawn for in-house use and 0.74 acre-feet/year lot for the remaining uses. This review is based on water use of 0.26 acre-feet/year for household use and 0.74 acre-feet/year for other uses.

² Only the Dawson aquifer water supply will be analyzed in this review.

The State Engineer further notes that Well Permit No. 85571-F dated May 26, 2021 is located on the property and reflects re-permitting of previous Well Permit No. 95869 located on the property.

Finally, the State Engineer stated that “[b]ased upon the above and pursuant to section 30-28-136(1)(h)(I), C.R.S., the State Engineer’s Office offers the opinion that the proposed water supply can be provided without causing material injury to existing water rights and the supply is expected to be adequate.”

Recommended Findings

6. Quantity and Dependability. Applicant’s water demand for the Warner Minor Subdivision is 4.0 acre-feet per year from the Dawson aquifer for a total demand of 1,200 acre-feet for the subdivision for 300 years. The demand for the 4 residential lots can be met by the Dawson aquifer water authorized for withdrawal in Replacement Plan 4025-RP dated October 22, 2020.

Based on the water demand of 1,200 acre-feet/year for the Warner Minor Subdivision and the Replacement Plan permitting withdrawals in that amount, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for Warner Minor Subdivision.

7. Quality. The water quality requirements of Section 8.4.7.B.10 of the Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

8. Basis. The County Attorney’s Office reviewed the following documents in preparing this review: the Water Supply Information Summary submitted October 22, 2021, the Water Resources Report dated September 27, 2021, the State Engineer Office’s opinion dated June 29, 2021, Commission Determination of Water Right No. 4025-BD and Replacement Plan 4025-RP. 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 its successors and assigns shall comply with Determination of Water Right No. 4025-BD and with all requirements of Replacement Plan No. 4025-RP. Water use shall not exceed 1.0 acre-feet annually per well for the 4-lot subdivision, and all stream depletions shall be replaced with non-evaporative septic system return flows for a period of 300 years.

B. The County requires that for subdivisions of 4 lots or more when there is a

replacement plan, Applicant shall create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water determinations and replacement plans for the property.

C. Applicant and its successors and assigns shall 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 Determination of Water Right No. 4025-BD and Replacement Plan No. 4025-RP.

The covenants shall specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 1,200 acre-feet of not nontributary Dawson aquifer water pursuant to Determination and Replacement Plan No. 4025-BD and 4025-RP to satisfy El Paso County's 300-year water supply requirement for the 4 residential lots for the Warner Minor Subdivision.

2) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of compliance with the Determination and Replacement Plan, which includes pumping of the Dawson wells in a manner to replace depletions during pumping.

3) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each residential 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 or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. 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."

4) Address future lot conveyances. 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 Determination No. 4025-BD and Replacement Plan No. 4025-RP 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.”

5) Advise of monitoring requirements. 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 Dawson aquifer wells.

6) Address amendments to the covenants. 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 the Warner Minor Subdivision pursuant to the Colorado Ground Water Commission Findings and Order No. 4025-BD and Replacement Plan No. 4025-RP. Further, written approval of the 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 Determination from the Colorado Ground Water Commission 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.”

7) Address termination of the covenants. The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of the Colorado Ground Water Commission Findings and Order No. 4025-BD and Replacement Plan No. 4025-RP are also terminated by order of the Commission, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the property Dawson aquifer water in the decreed amount of at least 1.0 acre-feet per residential lot annually and a total decreed amount of at least 4.0 acre-feet annually for the 4 residential lots in the subdivision for 300 years, for a total of 1,200 acre-feet of Dawson aquifer water for the subdivision.

E. Applicant and its successor assigns shall convey by recorded warranty deed these reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson aquifer underlying the respective lots pursuant to Colorado Ground Water Commission Findings and Order No. 4025-BD and Replacement Plan No. 4025-RP. Sufficient water rights are 300 acre-feet from the Dawson aquifer (1.0 acre-feet/year x 300 years) for each of the residential lots.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer):
“These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each lot of the Warner Minor Subdivision. 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.”

F. Applicant and its successors and assigns shall submit Declaration of Covenants, Conditions, and Restrictions, form deeds, 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 Colorado Ground Water Commission Findings and Order No. 4025-BD and Replacement Plan No. 4025-RP 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, Colorado Ground Water Commission Findings and Order No. 4025-BD and Replacement Plan No. 4025-RP and any assignments thereof, any warranty deeds regarding the water rights, and the Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

H. Applicant and/or lot owners must obtain well permits pursuant to Colorado Ground Water Commission Findings and Order No. 4025-BD and Replacement Plan No. 4025-RP.

I. Prior to recording the final plat, Applicant shall upload a copy of Well Permit No. 85571-F to eDARP.

J. 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. Applicants 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: John Green, Planner II