



May 26, 2021

Ryan Howser
El Paso County Development Services Department
DSDcomments@elpasoco.com

RE: Winsome Preliminary Plan Amendment
Part of Sec. 24, T11S, R65W, 6th P.M. and Part of the W ½ of the W ½ of Sec. 19, T11S,
R64W, 6th P.M.
Water Division 1, Water District 1
Kiowa-Bijou Designated Basin

Dear Mr. Howser:

We have reviewed your April 29, 2021 submittal concerning the above referenced proposal to amend the preliminary plan to subdivide 768 acres into 146 residential lots, 1 commercial lot, public streets, right of way tract and one open space tract. It appears the four new additional lots proposed are a part of the proposed Winsome Filing No. 3. Our office previously commented on the McCune Ranch Preliminary Plan (containing 766.66 acres) in a letter dated May 3, 2019, of which the Winsome Preliminary Plan appears to take over the McCune Ranch Preliminary Plan.

Water Supply Demand

According to the submitted Water Resources and Wastewater Report for Winsome Subdivision revised April 2021 (“Water Resources Report”) the total estimated water requirement is 92.6 acre-feet/year (0.6 acre-feet per year per residential lot and 5.0 acre-feet per year for the commercial lot). The estimated water requirement of 0.6 acre-feet/year per residential lot assumes that 0.3 acre-foot per year is required for domestic indoor use, 0.25 acre-feet per year is required for irrigation of up to 4,000 square feet of lawn, garden and trees, and 0.05 acre-feet per year is required for watering of four large domestic animals.

Source of Water Supply

According to the Water Resources Report, the proposed source of water supply for the residential lots is individual on-lot wells producing from the not-nontributary Dawson Aquifer that would be permitted pursuant to the amended replacement plans for Determination of Water Right no. 1692-BD and the proposed source of water supply for the commercial lot is an individual on-lot well producing from the nontributary Denver Aquifer that would be permitted pursuant to Determination of Water Right no. 1691-BD.

Determination of Water Right no. 1692-BD was issued by the Ground Water Commission (“Commission”) on June 25, 2008 for an allowed average annual amount of withdrawal of ground water of 819 acre-feet from the Dawson Aquifer (based on an aquifer life of 100 years) to be used on 900.52 acres (which include the 254.58 acres of the subject subdivision). On March 13, 2018, the Commission approved Amendment No. 1 of Determination of Water Right no. 1692-BD which cancelled an allowed average annual withdrawal of 12 acre-feet from the Determination, leaving



an allowed average annual amount of withdrawal of 807 acre-feet (based on an aquifer life of 100 years) in the Determination.

On February 3, 2020 the Commission approved Replacement Plan No. 2 for Determination of Water Right no. 1692-BD (canceling Replacement Plan No. 1 for Determination of Water Right no. 1692-BD previously approved on June 29, 2018). Replacement Plan no. 2 for Determination of Water Right no. 1692-BD allows for the withdrawal of 49.8 acre-feet per year of ground water from the Dawson aquifer for 300 years, through 83 wells to be located on 83 residential lots on 278.1 acres, a portion of the subject 768 acres. Each well may withdraw 0.6 acre-feet per year of ground water to be used for use in one single family dwelling, the irrigation of landscape, lawn and gardens and the watering of domestic animals and stock. These allowed uses are consistent with the proposed uses specified in the Water Supply Report.

On December 1, 2020 the Commission approved Replacement Plan No. 3 for Determination of Water Right no. 1692-BD. Replacement Plan no. 3 for Determination of Water Right no. 1692-BD allows for the withdrawal of 36 acre-feet per year of ground water from the Dawson aquifer for 300 years, through 60 wells to be located on 60 residential lots on 479.4 acres, which is a portion of the subject 768 acres. Each well may withdraw 0.6 acre-feet per year of ground water to be used for use in one single family dwelling, the irrigation of landscape, lawn and gardens and the watering of domestic animals and stock. These allowed uses are consistent with the proposed uses specified in the Water Supply Report. There is currently a pending application to amend Replacement Plan No. 3 for Determination of Water Right no. 1692-BD to allow for the withdrawal of 37.8 acre-feet per year of groundwater from the Dawson aquifer for 300 year through 63 wells to be located on 63 residential lot on 479.4 acres, which is a portion of the subject 768 acres. Each well is proposed to withdraw 0.6 acre-feet per year from the Dawson aquifer for in-house sanitary uses, landscape/lawn and garden irrigation and for the watering of domestic animals and livestock. Since the amended Replacement Plan No. 3 for Determination of Water Right no. 1692-BD is still pending, the legal water supply for the additional 3 residential lots has not been approved.

Determination of Water Right no. 1691-BD was issued by the Ground Water Commission ("Commission") on June 25, 2008 for an allowed average annual amount of withdrawal of ground water of 528 acre-feet from the Denver Aquifer (based on an aquifer life of 100 years) to be used on 900.52 acres (which include the 254.58 acres of the subject subdivision). On February 18, 2020, the Commission approved Amendment No. 1 of Determination of Water Right no. 1691-BD which changed the allowed place of use and types of use to domestic, industrial, commercial, irrigation, augmentation, stock watering, recreation water feature ponds and piscatorial habitat less than 1,000 square feet and wildlife, replacement and all other augmentation purposes and municipal use by the Sterling Metropolitan District to be used on the 900.52 acres of Overlying Land, within the boundaries of the Sterling Ranch Metropolitan District as those boundaries currently exist or as they may exist in the future and an additional 613.6 acres further described in the February 18, 2020 Findings and Order. The Water Resources Report indicates 60 acre-feet per year from Determination of Water Right no. 1691-BD was transferred to Winsome, LLC, however the special warranty deed submitted with Replacement Plan No. 3 indicates 1,500 acre-feet (5 acre-feet per year for 300 years) from Determination of Water Right No. 1691-BD was transferred to Winsome, LLC. If 60 acre-feet per year from Determination of Water Right no. 1691-BD was transferred to Winsome, LLC, the applicant should provide documentation showing such transfer.

The proposed source of water for this development is a bedrock aquifer allocation from the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which the bedrock aquifer sources will be a physically and economically viable source of water. According to 37-90-107(7)(a), C.R.S., "Permits issued pursuant to this subsection (7) shall allow

withdrawals on the basis of an aquifer life of 100 years.” Based on this allocation approach, the annual amounts of water determined in Determination of Water Right Nos. 1692-BD and 1691-BD is equal to one percent of the total amount, as determined by rule 5.3.2.1 of the Designated Basin Rules, 2 CCR 410-1. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

In the El Paso County Land Development Code, effective November 1986, Chapter 5, Section 49.5, (D), (2) states:

“- Finding of Sufficient Quantity - The water supply shall be of sufficient quantity to meet the average annual demand of the proposed subdivision for a period of three hundred (300) years.”

The State Engineer’s Office does not have evidence regarding the length of time for which the bedrock aquifer sources will “meet the average annual demand of the proposed subdivision.” However, treating El Paso County’s requirement as an allocation approach based on three hundred years, the allowed average annual amount of withdrawal of 49.8 acre-feet per year from the Dawson aquifer pursuant to Replacement Plan No. 2 for Determination of Water Right no. 1692-BD for a maximum of 300 years and the allowed average annual amount of withdrawal of 36 acre-feet per year from the Dawson aquifer pursuant to Replacement Plan No. 3 for Determination of Water Right no. 1692-BD for a maximum of 300 years, for a total withdrawal of 85.8 acre-feet per year is **not** sufficient to supply the residential requirement of 87.6 acre-feet per year. The allowed average annual amount of withdrawal of 5 acre-feet per year from the Denver aquifer pursuant to Determination of Water Right no. 1691-BD for a maximum of 300 years, is sufficient to supply the commercial requirement of 5 acre-feet/year.

The Water Resources Report submitted makes reference to other water rights, including those in the Arapahoe and Laramie-Fox Hills Aquifers under Determination of Water Right nos. 1690-BD and 1689-BD, but those rights are not identified as a sources of water for the subdivision.

In our letter dated May 3, 2019 regarding the McCune Ranch Subdivision Preliminary Plan we noted that there is an existing small-capacity Dawson Aquifer well, permit no. 162283, with a permitted well location that would place it on the 766.6 acres. Well permit no. 162283 was issued on a tract of 40 acres described as the NW ¼ of the SW ¼ of Sec. 19, Twp. 11 S, Range 64 W, 6th P.M., without consideration of material injury to other water rights. According to the January 7, 2019 water resources report submitted with that referral request a search for the well structure was conducted on January 7, 2019, resulting in no evidence that the structure exists at or near the location depicted in the permit. In addition, the then owner of the property, Mary Sue Liss with McCune Ranch, indicated that she has never seen a well casing or structure since she has owned or lived on the property. Therefore it is believed that the well is not located on property. However, the developer agreed to abandon the well per Colorado Well Construction Rules and Regulations should the well structure be found during construction of the development. In the event that the well is located and plugged and abandoned the well owner must submit a Well Abandonment Report (Form GWS-09) available for download at: <https://dwr.colorado.gov/services/well-construction-inspection>.

State Engineer’s Office Opinion

Based upon the above and pursuant to section 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply is **not adequate** and **cannot** be provided without causing injury to decreed water rights.

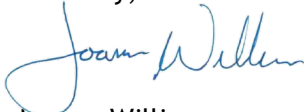
It appears that in order to obtain a favorable opinion from this office on the proposed water supply to this subdivision, the applicant must do the following.

1. The amended Replacement Plan No. 3 for Determination of Water Right No. 1692-BD must be approved to allow for the withdrawal of the additional 1.8 acre-feet per year (37.8 acre-feet per year total) from the Dawson aquifer for the additional three residential lots.

Additional Comments

The submittal indicates that a storm water detention structure will be constructed as a part of this project. The applicant should be aware that, unless the structure can meet the requirements of a “storm water detention and infiltration facility” as defined in Designated Basin Rule 5.11, the structure may be subject to administration by this office. The applicant should review Rule 5.11 to determine whether the structure meets the requirements of the Rule and ensure any notification requirement is met.

If you, or the applicant, have any questions, please contact Ailis Thyne at 303-866-3581 ext. 8216.

Sincerely,

Joanna Williams
Water Resources Engineer

Ec: Project no. 25245
Permit no. 162283

Winsome Preliminary Plan Amendment.docx