

County Attorney

Kenneth R. Hodges, County Attorney
719-520-6485
Centennial Hall
200 S. Cascade, Suite 150
Colorado Springs, CO 80903
www.EIPasoCo.com

Board of County Commissioners
Holly Williams, District 1
Carrie Geitner, District 2
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June 20, 2023

SF-22-39 Terra Ridge North 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 proposal for approval of Terra Ridge North, a subdivision application by Phillip and Jennifer Miles (“Applicant”) to subdivide 39.72 acres into 11 new lots and to vacate and re-plat two existing lots known as Lots 5 and 6 of Terra Ridge Subdivision, for a total of 13 lots (collectively the “property”). The property is zoned RR-2.5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand for the 11 new lots subdivision is 9.08 acre-feet/year, comprised of 2.860 acre-feet/year for household use, 5.740 acre-feet/year for irrigation, and 0.484 acre-feet/year for animal watering. The estimated demand for the 2 replatted lots based upon information provided at the time those lots were platted¹ is 1.0 acre-foot per lot/year, comprised of 0.3 acre-feet for in-house use, 0.65 acre-feet for irrigation, and 0.05 acre-feet for stock watering. The total annual demand for the subdivision is thus 11.08 acre-feet/year. Based on this total demand, Applicant must be able to provide a supply of 3,324 acre-feet of water (11.08 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

¹ Though the 2 replatted lots were not included in the WSIS or Water Resources Report, they were evaluated in this Review based on information found in the file for Terra Ridge Filing No. 1. Applicant is required to submit an updated WSIS and Water Resources Report prior to the hearing before the Board of County Commissioners.

ASSISTANT COUNTY ATTORNEYS

NATHAN J. WHITNEY
CHRISTOPHER M. STRIDER

STEVEN A. KLAFFKY
TERRY A. SAMPLE

LORI L. SEAGO
DOREY L. SPOTTS

BRYAN E. SCHMID
STEVEN W. MARTYN

Proposed Water Supply

3. The Applicant has provided for the source of water for the 11 new lots to derive from the not-nontributary Dawson aquifer as provided in the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 (the “2022 Decree”). In the 2022 Decree, the Court granted a vested right to 4050 acre-feet of water in the Dawson aquifer underlying Applicant’s property and approved the pumping of 0.825 acre-feet per year up to a total of 9.08 acre-feet per year for 11 lots pursuant to the approved augmentation plan for uses consisting of domestic, outdoor irrigation, and up to four horses or equivalent livestock per residence. The Court also granted vested rights to 3170 acre-feet of water in the Denver aquifer, 1650 acre-feet of water in the Arapahoe aquifer, and 1130 acre-feet of water in the Laramie-Fox Hills aquifer. The Court further awarded a vested right to use 11 wells on the property (one Dawson aquifer well per lot).

The approved augmentation plan in the 2022 Decree has a term of 300 years and requires that septic system return flows be used for augmentation during the pumping period for the 11 approved wells. Applicant must reserve the entirety of the decreed rights in the nontributary Arapahoe and Laramie-Fox Hills aquifers, to replace any injurious post pumping depletions. The wells 1-11 each may pump up to 0.825 acre-feet per year.

4. The water supply for Lots 1 and 13, originally platted as part of the Terra Ridge Filing No. 1 subdivision, will be the Dawson aquifer as provided in the Findings of Fact, Conclusions of Law, Judgment and Decree in combined Case Nos. 96CW68 (Water Division 2) and 96CW146 (Water Division 1) (the “1996 Decree”). The 1996 Decree allowed the withdrawal of up to 1.0 acre-foot/year/lot for the property that includes these two lots. Water to be used for augmentation shall derive from a contract with Northgate Company for the purchase of water or from the Arapahoe and Laramie-Fox Hills aquifer water adjudicated under the 1996 Decree.

State Engineer’s Office Opinion

5. In a letter dated April 19, 2023, the State Engineer stated that “[a]ccording to the Water Supply Information Summary . . . the total estimated water requirement for the 11 lots is 9.08 acre-feet per year (0.825 acre-feet per year per lot) with the 11 lots on the 39.72 acres having a 300 year water supply.” The State Engineer noted that the wells for the 11 new lots will produce from the Dawson aquifer pursuant to the augmentation plan decreed in Case No. 22CW3066, and the 2 replatted lots “will continue to operate under the existing water supply operating pursuant to Division 2 Water Court case no. 96CW068 (Division 1 Court Case No. 96CW146).”

Finally, the State Engineer provided their opinion, “[p]ursuant to Section 30-28-136(1)(h)(l) C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

Recommended Findings

6. Quantity and Dependability. Applicant's water demand for Terra Ridge North is 11.08 acre-feet per year for a total demand of 3,324 acre-feet for the subdivision for 300 years. The 2022 Decree allows for 11 wells limited to an annual withdrawal of 0.825 acre-feet. The 1996 Decree allows an annual withdrawal of 1.0 acre-foot per year for each of the two replatted lots.

Based on the water demand of 11.08 acre-feet/year for Terra Ridge North and the 2022 Decree and 1996 Decree withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Terra Ridge North.

7. The water quality requirements of Section 8.4.7.B.10.g. of the El Paso County 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: a *Water Resources Report* dated December 2022, the Water Supply Information Summary, the State Engineer's Office Opinion dated April 19, 2023, Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 entered on November 8, 2022 ("Decree and Augmentation Plan"), Findings of Fact, Conclusions of Law, Judgment and Decree in combined Case Nos. 96CW68 (Water Division 2) and 96CW146 (Water Division 1), and the Declaration of Covenants, Conditions, and Restrictions of Terra Ridge, El Paso County, Colorado, recorded in the records of the El Paso County Clerk and Recorder on December 15, 1997 at Reception No. 97146677. 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 its successors and assigns shall comply with all requirements of the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 (the "2022 Decree") and Findings of Fact, Conclusions of Law, Judgment and Decree in combined Case Nos. 96CW68 (Water Division 2) and 96CW146 (Water Division 1) (the "1996 Decree"), as applicable. Specifically, water withdrawn from the Dawson aquifer by each of the proposed wells on Lots 2-12 shall not exceed 0.825 annual acre-feet, based on a total combined annual withdrawal of 9.08 acre-feet, and water withdrawn from the Dawson aquifer by each of the wells on Lots 1 and 13 shall not exceed 1.0 annual acre-foot, based on an total combined annual withdrawal of 2.0 acre-feet. Depletions during pumping shall be replaced for Lots 2-12 by

individual on-lot non-evaporative septic systems and for Lots 1 and 13 pursuant to the terms of the 1996 Decree.

B. Applicant must create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the 2022 Decree for Lots 2-12. If deemed legally necessary or expedient, Applicant must also affirm in the covenants for this subdivision that Lots 1 and 13 remain subject to the covenants for Terra Ridge Filing No. 1, which are enforced by the existing property owners' association.

C. Applicant shall create restrictive covenants upon and running with Lots 2-12 of the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, and the new HOA regarding all applicable requirements of the 2022 Decree.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 2,724 acre-feet of Dawson aquifer water, 1,650 acre-feet of Arapahoe aquifer water, and 1,130 acre-feet of Laramie-Fox Hills aquifer water pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 to satisfy El Paso County's 300-year water supply requirement for Lots 2-12 lots of the Terra Ridge North Subdivision. The Covenants shall further identify that 247.5 acre-feet (0.825 AF/year) of Dawson aquifer water is allocated to each of Lots 2-12. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply.

2) Advise of responsibility for costs. The Covenants shall advise the HOA, owners of Lots 2-12, and their successors and assigns of their obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Arapahoe and Laramie-Fox Hills aquifer wells in the future to replace post-pumping depletions.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each owner of Lots 2-12 to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual 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 of Lots 2-12 in the subdivision have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed. 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 Lots 2-12 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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 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 the HOA, future owners of Lots 2-12, and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from existing and future wells in the Dawson and/or Arapahoe and Laramie-Fox Hills aquifers.

6) Require well permits. The Covenants shall require that well permits be obtained pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 and C.R.S. § 37-90-137(4) and (10).

7) 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 Terra Ridge North Subdivision pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066. 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 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 determination.”

8) 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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 are also terminated by the Division 1 Water Court 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 any deeds of Lots 2-12 of the Property Dawson aquifer water in the decreed amount of 247.5 acre-feet (0.825 acre-feet per year). 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.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future owners of Lots 2-12 shall convey sufficient water rights in the Dawson aquifer underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement.

Any and all conveyance instruments shall also 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 water supply, and replacement during pumping, for each of the lots of the Terra Ridge North 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. Prior to closing on any lot sales, Applicant shall convey to the HOA the reserved 1,650 acre-feet of Arapahoe aquifer water and the reserved 1,130 acre-feet of Laramie-Fox Hills aquifer water.

G. Applicant and its successors and assigns shall submit a 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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 22CW3066 and shall identify the obligations of the individual lot owners thereunder.

H. Applicant and its successors and assigns shall record all applicable documents, including but not limited to 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.

I. Prior to recording the final plat, Applicant shall:

- 1) Upload a copy of the covenants for Terra Ridge Filing No. 1 into eDARP;
- 2) Upload into eDARP the deeds for Lots 5 & 6, Terra Ridge Filing No. 1 showing the chain of title from Terra Five Development, LLC to the current owner;
- 3) Correct and upload into eDARP the Water Supply Information Summary to include relevant information for the 2 replatted lots, in addition to the 11 new lots;
- 4) Correct and upload into eDARP the Water Resources Report to include relevant information for the 2 replatted lots, in addition to the 11 new lots and to correct the names of the developments mentioned in Section 2.1 (i.e. Terra Nova to Terra Ridge North and JeniShay Farms to Terra Ridge Filing No. 1).

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. 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, Project Manager, Planner III