

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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VR-22-5            15435 E. Chaparral Loop a/k/a Peyton Ranches Filing No. 1B Minor  
Subdivision ("Subdivision") Vacation and Replat

Reviewed by:    Lori L. Seago, Senior Assistant County Attorney  
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## WATER SUPPLY REVIEW AND RECOMMENDATIONS

### Project Description

1. This is a proposal by Maddie Investments, LLC ("Applicant") for a vacation and replat to create a 3-lot subdivision on an existing lot of 17.82 +/- acres (the "property"). Lot 1 is estimated at 6.27 acres; Lot 2 is estimated at 6.52 acres, and Lot 3 is estimated at 5.0 acres. The property is zoned RR-5 (Rural Residential). There is an existing residence which will be located on Lot 2 of the newly formed subdivision.

### Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the water demand is 1.50 acre-feet/year for the subdivision (0.50 acre-feet/lot) which includes 0.78 acre-feet for household use, 0.518 acre-feet for irrigation, and 0.1998 acre-feet for stock watering. Based on this demand, Applicant must be able to provide a supply of 450 acre-feet of water (1.50 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 individual on-lot wells as provided in the following determinations issued to Maddie Investments, LLC, by the Colorado Ground Water Commission on October 5, 2021: Determination 4239-BD and Replacement Plan No. 4239-RP which will provide Dawson aquifer water for Lot 2; and Determination No. 4238-BD which will provide Denver aquifer water for Lots 1 and 3.

4. The Applicant provided a *Water Resources Report* for the Subdivision dated March 2022 by JDS-Hydro Consultants (the “*Report*”). The *Report* details the water supply as follows:

<b>Aquifer</b>	<b>Determination</b>	<b>Tributary Status</b>	<b>Area</b>	<b>Decreed Water</b>	<b>Annual Allocation (100-year) AF/Year</b>	<b>Annual Allocation (300-year) AF/Year</b>
Dawson	4239-BD	NNT	17.82	273	2.73	0.91
Denver	4238-BD	NNT	17.82	848.00	8.48	2.83
Arapahoe	4237-BD	NT	17.82	576.00	5.76	1.92
Laramie-Fox Hills	4236-BD	NT	17.82	535.00	5.35	1.78
<b>TOTAL</b>					<b>22.32 AF (100 years)</b>	<b>7.44 AF (300 years)</b>

There is 0.91 acre-feet/year of water available from the Dawson aquifer to supply the water demand for Lot 2, which is 0.50 acre-feet/year. The *Report* referenced an existing well on the property (Well Permit No. 91435) which will serve Lot 2 and will need to be cancelled and re-permitted.<sup>1</sup> There is 2.83 acre-feet/year of water available from the Denver aquifer to supply the demand for Lots 1 and 3, which is 0.50 acre-feet/lot (1.0 acre-feet/year total). Beneficial uses provided by the Determinations are: household use, irrigation, agricultural, livestock, commercial, industrial, fish and wildlife, and replacement. The *Report* states that the “current water rights are sufficient to meet estimated demands from both the Dawson and Denver Aquifers. The approved augmentation plan is sufficient to cover resulting alluvial depletions of 0.013 acre-feet for the existing lot supported by the Dawson aquifer and replacement water requirements or 4% of 0.04 AF/year to the Denver aquifer from the proposed two new lots.”

State Engineer’s Office Opinion

5. In a letter dated April 27, 2022, the State Engineer reviewed the submittal to replat the 17.82-acre parcel into a 3-lot minor subdivision. The State Engineer stated that the “source of water supply is individual on-lot wells producing from the not-nontributary Dawson aquifer that will operate pursuant to the Determination of Water Right No. 4239-BD and Replacement Plan No. 4239-RP, including well permit no. 86152-F for the lot with the existing well. The Replacement Plan No. 4239-RP allows for an average diversion of 0.5 acre-feet annually for a maximum of 300 years.” Further, the “remaining two lots will be serviced by individual on-lot wells producing from the not-nontributary Denver aquifer that will operate pursuant to the Determination of Water Right No. 4238-BD. These wells will have an average diversion of 1.0 acre-feet annually for a maximum of 300 years. ... The 4% replacement water will be replaced using return flows from the two residences and are estimated at 0.468 acre-feet per year, which will meet the 4% requirement of 0.04 acre-feet per year per residence.”

<sup>1</sup> Note: This permit was cancelled and re-permitted as Well Permit No. 86152-F on October 11, 2021.

The State Engineer further stated that the “allowed average annual amount of withdrawal of 2.73 acre-feet/year from the Upper Dawson aquifer would be reduced to one third of that amount, or 0.91 acre-feet/year and the allowed average annual amount of withdrawal of 8.48 acre-feet/year from the not-nontributary (4% replacement) Denver aquifer would be reduced to 2.82 acre-feet/year. As a result, the water may be withdrawn in those annual amounts for a maximum of 300 years.” Finally, the State Engineer provided their opinion that “pursuant 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 the Subdivision is 1.50 acre-feet per year for a total demand of 450 acre-feet for the subdivision for 300 years. Determination 4239-BD and Replacement Plan 4239-RP permit withdrawal of 0.50 acre-feet/year (150 acre-feet total) of Dawson aquifer water for a period of 300 years. Determination 4238-BD permits withdrawal of 1.0 acre-feet/year (300 acre-feet total) of Denver aquifer water for a period of 300 years. Based on the demand of 1.50 acre-feet/year for the 3-lot subdivision and the Determinations and Replacement Plan permitting withdrawals in that amount for a period of 300 years, there appears to be a sufficient water supply to meet the water demands of the Subdivision (15435 E. Chaparral Loop).

**Based on the water demand of 1.50 acre-feet/year for the Chaparral Heights Minor Subdivision and the Determinations and Replacement Plan permitting withdrawals in that amount, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for the Chaparral Heights 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: Colorado Ground Water Commission Determinations 4238-BD and 4239-BD and Replacement Plan 4239-RP, dated October 5, 2021, the Water Supply Information Summary provided April 7, 2022, the *Water Resources Report* dated March 2022, and the State Engineer Office’s Opinion dated April 27, 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 its successors and assigns shall comply with all requirements of Determination 4239-BD and Replacement Plan 4239-RP; specifically, that water use shall not exceed 0.50 acre-feet annually for the Dawson aquifer well to be utilized on Lot 2 of the

Subdivision and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years. Replacement of depletions must be provided for annually in the amounts shown in Exhibit A to Determination 4239-BD, and as also attached hereto as Exhibit A.

Applicant and its successors and assigns shall comply with all requirements of Determination 4238-BD; specifically, that water use shall not exceed 0.50 acre-feet annually for each of the two Denver aquifer wells to be utilized on Lots 1 and 3 of the Subdivision. Pursuant to Determination 4238-BD, "at least four percent (4%) of the amount of Underlying Groundwater withdrawn annually must be returned to the alluvial aquifer in the vicinity of the permitted point or points of withdrawal, unless other locations are approved by the Commission."

B. The County prefers that when there is a replacement plan, Applicants 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. For minor subdivisions such as this, however, Applicants may elect to solely rely on the covenant provisions required below and forego creation of an HOA. The Covenants shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Determination 4239-BD and Replacement Plan 4239-RP and Determination 4238-BD.

The Covenants shall specifically address the following:

1) Identify the water rights associated with all lots on the property. The Covenants shall reserve 150 acre-feet per lot of not nontributary Dawson aquifer water pursuant to Replacement Plan 4239-RP to satisfy El Paso County's 300-year water supply requirement for Lot 2 of the Subdivision. The Covenants shall also reserve 150 acre-feet per lot (300 acre-feet total) of not nontributary Denver aquifer water pursuant to Determination 4238-BD to satisfy El Paso County's 300-year water supply requirement for Lots 1 and 3 of the Subdivision.

2) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner 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, shall reserve said return flows to replace 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 lot served by a Dawson or Denver well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any other use is made of 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."

3) 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 the plan for replacement in Determination 4239-BD and Replacement Plan 4239-RP or Determination 4238-BD (whichever is applicable) 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.”

4) Advise of monitoring requirements. The Covenants shall advise future lot owners of this subdivision or their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from wells in the Dawson or Denver aquifers.

5) Require compliant septic systems. The Covenants shall advise future lot owners and their successors and assigns of their responsibility to construct septic systems in compliance with the State of Colorado and El Paso County Public Health standards and which shall not cause unreasonable impairment of water quality of the receiving aquifer.

6) Require well permits. The Covenants shall require that well permits be obtained pursuant to the requirements of Determination Nos. 4239-BD and 4238-BD and with approval by the Colorado Ground Water Commission.

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 Chaparral Heights Subdivision pursuant to Determination 4239-BD and Replacement Plan 4239-RP or Determination 4238-BD. 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 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.”

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 Determination 4239-BD and Replacement Plan 4239-RP or Determination 4238-BD are also terminated by the Colorado Ground Water Commission and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

C. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the property the determined amount of 0.50 acre-feet/year/lot for a period of 300 years, a total of 150 acre-feet per lot, from the Dawson aquifer for Lot 2 and from the Denver aquifer for Lots 1 and 3. Said reservation shall recite that this water shall not be separated from transfer of title to each property and shall be used exclusively for primary and replacement supply. Applicant shall convey by recorded warranty deed the reserved Dawson or Denver aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants, deeds or other such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney’s Office prior to recording the minor subdivision plat.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the Dawson or Denver aquifers: “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for Lot 2 (Dawson aquifer) or Lots 1 or 3 (Denver aquifer) of the Peyton Ranches Filing No. 1B 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.”

D. Applicant and its successors and assigns shall submit proposed Declaration of Covenants 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 Determination and Replacement Plan 4239-BD and Determination 4238-BD, and shall identify the obligations of the individual lot owners thereunder.

E. Applicant and its successors and assigns shall record all applicable documents, including, but not limited to, the Determination 4239-BD and Replacement Plan 4239-RP, Determination 4238-BD, 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.

F. Applicant shall upload a copy of Well Permit No. 86152-F to eDARP prior to recording the final plat.

G. Applicant shall correct the Water Supply Information Summary by changing the answer in question 6.B. to "Peyton Ranches subdivision" from "Platted but not recorded," and uploading the new WSIS to eDARP prior to recording the final plat.

H. 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: Ryan Howser, Planner II

Exhibit A  
Replacement Plan - Determination No.: 4239-BD  
Page 1 of 1

Designated Basin Summary Table for Maddie Investments, LLC							
Pumping Rate of 0.5 acre-feet per year for 300 Years from the Dawson aquifer							
Section(s): Sections 28 and 33, Township 11 South, Range 63 West, 6th P.M.							
Year	Pumping (Q) (AF/YR)	Annual Depletion (q) (AF/YR)	Depletion as a % of Pumping (q/Q)	Year	Pumping (Q) (AF/YR)	Annual Depletion (q) (AF/YR)	Depletion as a % of Pumping (q/Q)
5	0.5	0.0000	0.00	155	0.5	0.0038	0.75
10	0.5	0.0000	0.00	160	0.5	0.0040	0.80
15	0.5	0.0000	0.00	165	0.5	0.0043	0.86
20	0.5	0.0000	0.00	170	0.5	0.0045	0.91
25	0.5	0.0000	0.01	175	0.5	0.0048	0.96
30	0.5	0.0001	0.01	180	0.5	0.0051	1.02
35	0.5	0.0001	0.02	185	0.5	0.0054	1.08
40	0.5	0.0001	0.03	190	0.5	0.0057	1.13
45	0.5	0.0002	0.04	195	0.5	0.0060	1.19
50	0.5	0.0003	0.05	200	0.5	0.0063	1.25
55	0.5	0.0003	0.06	205	0.5	0.0066	1.31
60	0.5	0.0004	0.08	210	0.5	0.0069	1.37
65	0.5	0.0005	0.10	215	0.5	0.0072	1.43
70	0.5	0.0006	0.12	220	0.5	0.0075	1.49
75	0.5	0.0007	0.14	225	0.5	0.0078	1.56
80	0.5	0.0008	0.17	230	0.5	0.0081	1.62
85	0.5	0.0010	0.19	235	0.5	0.0084	1.68
90	0.5	0.0011	0.22	240	0.5	0.0087	1.75
95	0.5	0.0013	0.25	245	0.5	0.0091	1.81
100	0.5	0.0014	0.28	250	0.5	0.0094	1.88
105	0.5	0.0016	0.32	255	0.5	0.0097	1.94
110	0.5	0.0018	0.36	260	0.5	0.0100	2.01
115	0.5	0.0020	0.39	265	0.5	0.0104	2.07
120	0.5	0.0022	0.43	270	0.5	0.0107	2.14
125	0.5	0.0024	0.47	275	0.5	0.0110	2.21
130	0.5	0.0026	0.52	280	0.5	0.0114	2.28
135	0.5	0.0028	0.56	285	0.5	0.0117	2.34
140	0.5	0.0030	0.61	290	0.5	0.0120	2.41
145	0.5	0.0033	0.65	295	0.5	0.0124	2.48
150	0.5	0.0035	0.70	300	0.5	0.0127	2.55

Created by jmw on August 09, 2021

Values for 'Depletion as a % of Pumping' (q/Q) are not calculated when the pumping rate (Q) is changed to anything but zero