

Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the 16.62 acres of land which makes up the entire proposed Hunsinger Subdivision.” The State Engineer noted that pursuant to the Decree, the following amounts of water are available underlying the 16.62 acre property:

Aquifer	Volume (AF)	Annual Allocation 300 Year (AF/Year)
Denver (NNT)	184	0.613
Arapahoe (NNT)	678	2.26
Laramie-Fox Hills (NT)	449	1.5

The State Engineer notes that the augmentation decreed “allows for diversion of 0.612 acre-feet annually from [the] Denver aquifer and 1.044 acre-feet annually from the Arapahoe aquifer, each for a maximum of 300 years.” Further, the Applicant has proposed to continue to use the existing wells pursuant to the augmentation plan. The State Engineer stated the Applicant must “apply for, and obtain a [sic] new well permits issued pursuant to Section 37-90-137(4) C.R.S., or plug and abandon these wells.”

Finally, the State Engineer states that “it is our opinion, pursuant to CRS 30-28-136(1)(h)(l), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(2) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits.”

4. Decree and Plan for Augmentation. The Decree grants a vested right to 184 acre-feet of ground water in the not nontributary Denver aquifer and 678 acre-feet of ground water in the not nontributary Arapahoe aquifer, of which only 313.2 acre-feet may be withdrawn pursuant to the Augmentation Plan, which the Decree approves. The remaining 364.8 acre-feet of Arapahoe aquifer water not included in the Augmentation Plan shall not be pumped for any purpose unless a separate Court-approved plan for augmentation is approved. The Decree also grants a vested right to 449 acre-feet of ground water in the nontributary Laramie-Fox Hills aquifer, which shall be reserved for replacement of post-pumping depletions pursuant to the Augmentation Plan.

Annual withdrawals from the Denver aquifer shall not exceed 0.306 acre-feet annually for each of the 2 Denver aquifer wells (no more than 184 acre-feet total for the duration of the Augmentation Plan). Annual withdrawals from the Arapahoe aquifer shall not exceed 0.348 acre-feet annually for each of the 3 Arapahoe aquifer wells (no more than 313.2 acre-feet total for the duration of the Augmentation Plan). As stated in the Decree, allowed water uses are “indoor residential use, a hot tub or spa on each lot, commercial uses such as those allowed by Policy 2011-3 for ‘exempt’ wells, dust suppression, and augmentation through septic system return flows. Water from the Denver aquifer wells may also be used for irrigation of flower pots and planters, and for

stock water for no more than two large animals such as horses. Water from the Arapahoe aquifer wells may also be used for irrigation of flower pots, for drip irrigation of shrubs, flowers and trees, and for stock water for no more than two large animals such as horses. Due to the limited amount of water available for each lot, sprinkler irrigation and irrigation of turf grass are prohibited. Use of the Laramie-Fox Hills aquifer water reserved herein is limited to augmentation.”

Replacement of Depletions During Pumping. For any wells in the not nontributary Denver aquifer, the Applicant is required to replace all depletions from pumping of 0.306 acre-feet annually from the two wells in the Denver aquifer (0.612 acre-feet annually combined and 184 acre feet total over 300 years). For any wells constructed in the not nontributary Arapahoe aquifer, the Applicant is required to replace all depletions from pumping of 0.348 acre-feet annually from the three wells in the Arapahoe aquifer (1.044 acre-feet annually combined and 313.2 acre feet total over 300 years). The Decree notes that use of each well for indoor uses in a separate single family dwelling in the amount described in the Decree “will result in septic system return flows sufficient to replace depletions during each and every year of the 300 year pumping period.” The Decree further requires that in order to generate the required return flows, “each Denver and Arapahoe aquifer well must be used to provide at least 0.2 acre foot of water to a single family dwelling on the property before other uses of the well can be made, and annual withdrawals shall be limited as indicated in ¶ 15 [of the Decree].”

Replacement of Post-Pumping Depletions. The Augmentation Plan will have a pumping period of a minimum of 300 years. The Decree requires the Applicant to reserve and dedicate to the Plan for Augmentation all 449 acre-feet of Laramie-Fox Hills aquifer water to replace all post-pumping depletions to the Monument Creek system. The Decree states that although only “. . . 440 acre-feet of Laramie-Fox Hills aquifer water is considered to be available to replace post-pumping depletions,” the Decree requires that all of the 449 acre-feet be reserved. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions, and the Decree requires that these waters may not be severed from ownership of the overlying property or used for any other purpose. The Decree provides several factors for determining when the post-pumping replacements shall begin.

5. Analysis. Applicant’s total water demand for the Hunsinger Subdivision is 1.656 acre-feet/year. Pursuant to the Decree, Applicants may pump a maximum total of 0.612 acre-feet/year from the 2 Denver aquifer wells and a maximum total of 0.348 acre-feet/year from the 3 Arapahoe aquifer wells. The Decree determined that there is an available water supply from the Denver, Arapahoe, and Laramie-Fox Hills aquifers, specifically, 0.613 acre-feet is available annually for 300 years from the Denver aquifer and 1.044 acre-feet is available annually for 300 years from the Arapahoe aquifer, which is adequate to meet the demands of the subdivision. Based on the total water demand for the subdivision of 1.656 acre-feet annually, the available supply of 0.613 acre-feet annually from the Denver aquifer and 1.044 acre-feet from the Arapahoe aquifer for a

total supply of 1.656 acre-feet annually, there appears to be a sufficient water supply to meet the demands of the Hunsinger Subdivision if the water supply is operated pursuant to the Augmentation Plan.

6. The water quality requirements of Section 8.4.7.B.10 of the El Paso County Land Development Code must be satisfied.

7. Therefore, based on the finding by the Water Court that under the terms of the Decree and Augmentation Plan, no injury will be caused to vested or conditional water rights holders, the finding of sufficiency and no injury by the State Engineer pursuant to their review of District Court Water Division 2 Case No. 2016CW3088, and pursuant to the requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. The El Paso County Health Department shall provide an opinion as to water quality.

REQUIREMENTS:

A. Applicant shall take all necessary steps to ensure that if and when Applicant conveys the Property for this subdivision, that the appropriate water rights and obligations of the Decree are also conveyed to the appropriate successor purchaser(s). These Requirements shall apply to the Applicant and its successors and assigns.

B. Applicant, its successors and assigns, shall comply with all requirements of Well Permit Nos. 250314-A and 172650 (or whichever 2 Denver wells may be utilized by Applicant) as may be required pursuant to the Decree. Prior to hearing by the Board of County Commissioners, Applicant shall clarify for the Planning and Community Development Department and the County Attorney's Office whether new permits have been applied for pursuant to C.R.S. § 37-90-137(4) and whether applications for 3 new Arapahoe aquifer wells have been submitted and permits obtained.

C. Section 8.4.7.B.4.e.iii, El Paso County Land Development Code, requires that for subdivisions of 4 lots or more, Applicant must create a homeowners' association ("HOA"), which shall, in this case, advise and obligate future lot owners of this subdivision, their successors and assigns, regarding all applicable requirements of District Court Water Division 2 Case No. 2016CW3088 ("Decree") and their obligations to comply with the same. Applicant shall assign or convey to the HOA all of Applicant's interests, rights, and obligations in the Decree, including the replacement requirement, and shall create restrictive covenants upon and running with the Property which shall advise and obligate the HOA and future lot owner(s) of this subdivision, their successors and assigns, regarding all applicable requirements of the Decree as well as their obligations to comply with the replacement requirements. Said Covenants shall also ensure that return flows by the use of non-evaporative septic systems are made to the stream systems, and that such return flows shall only be used to replace depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose. In addition, the Covenants shall

advise future lot owners of this subdivision, their successors and assigns, of their obligations regarding costs of operating the plan for augmentation, which may include construction and pumping of a Laramie-Fox Hills aquifer well or wells to replace post-pumping depletions. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the Decrees.

D. Applicant, its successors and assigns, shall reserve in the Covenants all of the 449 acre-feet of Laramie-Fox Hills water for the purpose of replacing all post-pumping depletions to the Monument Creek system. The Applicant shall convey to the HOA by warranty deed, prior to the time of lot sales, all 449 acre-feet of the water rights in the Laramie-Fox Hills aquifer underlying the Property, pursuant to the Augmentation Plan, to meet the post-pumping replacement obligations. Said reservation and deed shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for replacement supply. The Covenants specifically shall provide that in order to generate the required return flows, "each Denver and Arapahoe aquifer well must be used to provide at least 0.2 acre foot of water to a single family dwelling on the property before other uses of the well can be made, and annual withdrawals shall be limited as indicated in ¶ 15 [of the Decree]." Applicant shall provide copies of said Covenants 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 final subdivision plat.

E. Applicant, its successors and assigns, shall reserve in the Covenants a total of 184 acre-feet of Denver aquifer water and 313.2 acre-feet of Arapahoe aquifer water for the primary water supply. Applicant, its successors and assigns, shall convey by warranty deed, at the time of lot sales to successor owners, sufficient water rights in the Denver and Arapahoe aquifers underlying the Property, pursuant to the Decree, to satisfy El Paso County's 300-year water supply requirement. The Denver aquifer supply requirement for each of the 2 lots is as follows: 91.8 (0.306 acre-feet/year x 300 yrs.) and Arapahoe aquifer supply requirement for each of the 3 lots is 104.4 (0.348 acre-feet/year x 300 years). Said Covenants and/or conveyance instrument shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for the primary supply for the lot. Applicant shall provide said Covenants or other such reservation and/or 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 of the final subdivision plat.

F. Applicant shall submit the Declaration of Covenants, Conditions, and Restrictions, 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 must be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final subdivision plat. Said Declaration shall cross-

reference the Decree and shall recite the obligations of the individual lot owners under each of these documents.

G. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the Decree (District Court Water Division 2 Case No. 2016CW3088), agreements, assignments, 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.

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, the Home Owners Association, 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: Gabe Sevigny, Reviewer, Planner II