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SF-23-24 New Breed Ranch Filing Nos. 3

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

Project Description

1. New Breed Ranch Filing Nos. 3 is a proposal to subdivide a 34.7-acre tract (the “property”) into 7 lots by New Breed Ranch Inc. (“Applicant”). The property is zoned PUD RR-5 (Planned Unit Development - Rural Residential).

Estimated Water Demand

2. Pursuant to the *Water Supply Information Summary* (“WSIS”), the subdivision is estimated to use 3.22 acre-feet/year comprising 1.89 acre-feet per year for household use (0.27 acre-feet/year for a single-family dwelling), 1.33 acre-feet per year for landscape irrigation, livestock, and a pool or pond. Based on this total demand, Applicant must be able to provide a supply of 966 acre-feet of water (3.22 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 one or more individual on-lot wells withdrawing from the not-nontributary Denver aquifer as provided in the Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree in Division 2 Case Nos. 98CW58¹ and 99CW79 (“Decrees”).

¹ The water supply documents often mistakenly refer to Case No. 99CW58, which is incorrect.

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The Decrees allocate 39,100 acre-feet of water from the not-nontributary portion of the Denver aquifer. As El Paso County requires a 300-year supply, 39,100 acre-feet is divided by 300, leaving 130.3 acre-feet per year available to all lots in New Breed Ranch, including the 7 lots in Filing No. 3. 32 lots of the 94 contemplated in the Decrees were platted in Filings 1 and 2, resulting in 14.72 annual acre-feet being deducted from the 130.3 annual acre-feet available to supply Filing 3. Available Denver aquifer withdrawals available for this subdivision are to be used for the following: domestic, irrigation, commercial and livestock watering, decorative ponds and swimming pools, dust suppression, central water supply and firefighting purposes, including augmentation of such purposes.

The approved augmentation plan has a term of 300 years and requires that 4% of the annual pumping be replaced through non-evaporative septic system return flows during the pumping period for the constructed wells. Applicant must reserve an additional amount of its water rights in the Laramie-Fox Hills aquifer based on the provisions in the Decree to multiply the average annual Denver aquifer pumping through the end of pumping, by the appropriate stream depletions factor for Monument Creek which shall be used for replacement of post pumping depletions. Each of the wells may pump up to 0.46 acre-feet per year.

State Engineer's Office Opinion

4. In a letter dated June 26, 2024, the State Engineer stated that “. . .the water source is individual on-lot wells diverting from the Denver aquifer, pursuant to the decrees and augmentation plans in Case Nos. 98CW58 and 99CW79.”

The State Engineer provided their opinion, “. . . pursuant to 30-28-136(1)(h)(I), C.R.S. it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water.”

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for New Breed Ranch Filing No. 3 is 3.22 acre-feet per year. This results in a demand of 966 acre-feet for the subdivision for 300 years. Under the Decree, and subtracting the amounts allocated to Filings 1 and 2, Applicant owns the right to withdraw up to 115.58 acre-feet of water from the Denver aquifer per year, for a total of 34,674 over 300 years, which is a surplus to the requested demand.

Based on the water demand of 3.22 acre-feet/year for New Breed Ranch Filing No. 3 and the Decree's allowable amount of up to 130.3 acre-feet per year, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the New Breed Ranch Filing No. 3.

6. 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.**

7. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a Water Resources Report dated January 10, 2023, the Water Supply Information Summary, the State Engineer's Office Opinion dated June 26, 2024 and Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree in Division 2 Case No. 98CW58 entered on December 1, 1998 and the Amended Augmentation Plan in Division 2 Case No. 99CW79. 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 in Division 2 Case Nos. 98CW58 and 99CW79 ("Decree"), including that water withdrawn from the Denver aquifer shall not exceed 0.46 annual acre-feet per well. At least four percent (4%) of the allowed amount of water withdrawn annually must be returned to the aquifer. Depletions during pumping shall be replaced by individual on-lot non-evaporative septic systems.

B. Applicant must create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water decrees and augmentation plans for the property. **COMPLETED**

C. Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, and the HOA regarding all applicable requirements of the Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree in Division 2 Case Nos. 98CW58 and 99CW79. **COMPLETED**

D. Applicant and its successors and assigns shall reserve in any deeds of the property Denver aquifer water in the decreed amount of 966 acre-feet. 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 supply.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Denver aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Denver aquifer underlying the respective lots to satisfy El Paso County's 300-year water supply requirement. This amount is 138 acre-feet per lot (0.46 acre-feet/year).

Any and all conveyance instruments shall also recite as follows:

For the water rights and return flows conveyed for the primary supply (Denver 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 New Breed Ranch Filing No. 3. 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 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 in Division 2 Case Nos. 98CW58 and 99CW79 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 Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation from Division 2 Water Court, Case Nos. 98CW58 and 99CW79, 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.

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. 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: Joe Letke, Project Manager, Planner