

EL PASO COUNTY



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Colvin Heritage Farms

MS-20-10 Minor Subdivision

Reviewed by: Lori L Seago, Senior Assistant County Attorney
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FINDINGS AND CONCLUSIONS:

1. This is a minor subdivision proposal by Kevin and Michelle Colvin (“Applicant”) for a subdivision of 2 single-family lots on 19.8 +/- acres of land (the “Property”). An existing residence and well are currently present on the Property. The Property is zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells as provided in the Findings and Order No. 3655-BD approved by the Colorado Ground Water Commission on March 4, 2019 (“Determination”). The Commission also approved a Replacement Plan on March 4, 2019. On May 14, 2020, the Commission cancelled the original Replacement Plan and approved Replacement Plan No. 2 – Determination of Water Right No. 3655-BD (“Replacement Plan No. 2”) for the subdivision. Replacement Plan No. 2 allows 2.0 acre-feet per year of ground water to be withdrawn from the Dawson aquifer for a period of 300 years through 2 wells located on 2 single-family lots. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand is 0.25 acre-feet for household use, 1.4 acre-feet for irrigation, and 0.088 for stock watering for a total of 2.0 acre-feet per year for the subdivision. Based on a total demand of 2.0 acre-feet per year for the subdivision, Applicant must provide a water supply of 600 acre-feet (2.0 acre-feet per year x 300 years) to meet the County’s 300-year water supply requirement.

3. In a letter dated January 28, 2021, the State Engineer’s Office reviewed the submittal to subdivide the 19.8 acre parcel into 2 lots. The State Engineer stated that the “water supply is individual on-lot wells producing from the not-nontributary (actual replacement) Dawson aquifer pursuant to Replacement Plan No. 2 for Determination of Water Right No. 3655-BD.” The State Engineer further stated that Replacement Plan No. 2 “allows for the withdrawal of 2.0 acre-feet per year of groundwater from the Dawson aquifer for 300 years, through two wells to be located on two residential lots on 19.8 acres, which are the subject property of this referral. Each well may withdraw 1.0 acre-feet per year of groundwater to be used for in-house use, watering of domestic animal and livestock and landscape/irrigation of lawn, garden and

pasture. These allowed uses are consistent with the proposed uses specified in the Water Supply Report. The Water Resources Report makes a note of an existing well under permit no. 84459-F and a permit to construct a well, permit no. 84460-F.”

The State Engineer also noted that the amount of withdrawal of 2.0 acre-feet per year permitted by the Replacement Plan No. 2 “is sufficient to supply the requirement of 2.0 acre-feet/year” for the Colvin Heritage Farms minor subdivision. The State Engineer acknowledged the existence of several other water determinations referenced in Applicant’s *Water Resources Report for the Colvin Heritage Farms Minor Subdivision, dated December 8, 2020*, as prepared by Monson, Cummins & Shoheit, LLC (“*Water Resources Report*” or “*Report*”). Those determinations include nos. 3654-BD, 3653-BD and 3652-BD; however, since those water rights are not identified as sources of water supply for this subdivision, they are not analyzed further in either the State Engineer’s letter or in this review.

The State Engineer identified Well Permit No. 84459-F which reflects an existing well on the Property which will serve one of the lots. Well Permit No. 84460-F reflects the second well which is yet to be constructed and will serve the other lot.

Finally, the State Engineer stated that “[b]ased 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 adequate and can be provided without causing injury to decreed water rights.”

4. Determination of Water Right No. 3655-BD. The Colorado Ground Water Commission approved the Determination of Water Right No. 3655-BD in the Dawson aquifer on March 4, 2019, permitting an annual amount of withdrawal of ground water of 12.3 acre-feet from the Dawson aquifer for a period of 100 years (1,230 acre-feet total or 4.1 acre-feet/year for 300 years) which quantified an amount of water from beneath 19.8 acres of the overlying land. The allowed uses are identified as “domestic, including in house, landscape/irrigation of lawn and gardens, pasture irrigation and watering of domestic animals and stock.”

5. Replacement Plan No. 2 – Determination of Water Right No. 3655-BD. On May 14, 2020, the Commission approved Replacement Plan No. 2 – Determination of Water Right No. 3655-BD which replaced the original Replacement Plan dated March 4, 2019. Replacement Plan No. 2 allowed withdrawal of 2.0 acre-feet per year of groundwater from the Dawson aquifer for 300 years through 2 wells to be located on 2 residential lots on the 19.8 acres. The allowed annual amount of water to be withdrawn from each well shall not exceed 1.0 acre-feet/year.

Replacement of Depletions. Replacement Plan No. 2 provides a pumping period of 300 years. As stated: “Return flows from in-house use of groundwater shall occur through individual on-lot non-evaporative septic systems located within the above described 19.8 acres ... Replacement of depletions must be provided annually in the acre-feet amounts shown in Exhibit A.¹ Annual replacement requirements may be computed by pro-rating between the values given on Exhibit A, or for simplicity may be taken as the amount shown in the next succeeding 5 years increment.” Further, the “Applicant must provide the required annual amount

¹ Exhibit A was attached to Replacement Plan No. 2 and is also incorporated into this water review as Attachment A.

of replacement water for the first 100 years, or for as long as a well is operated pursuant to this plan, whichever is longer. To assure adequate return flows, at least one well must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served by any of the wells.”

6. Analysis. Applicant’s water demand is 2.0 acre-feet/year for the entire subdivision using Dawson aquifer water which is allowed under Replacement Plan No. 2 for the 2-lot subdivision for a total demand of 600 acre-feet for 300 years. The *Water Resources Report* dated December 8, 2020, states the annual water supply for the Colvin Heritage Farms Subdivision is 2.0 acre-feet for 300 years. With an annual demand of 2.0 acre-feet and a total available supply of 2.0 acre-feet/year, there appears to be a sufficient water supply to meet the water demands of the Colvin Heritage Farms Subdivision.

7. Section 8.4.7.B.10.g., of the El Paso County Land Development Code allows for the presumption of acceptable water quality for minor subdivision projects such as this.

8. Therefore, based on the Water Supply Information Summary, based on the finding of sufficiency and no injury by the State Engineer, based on the Determination of Water Right 3655-BD and Replacement Plan No. 2 and based on the requirements below, the County Attorney’s Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. There is a presumption of sufficient water quality.

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with all requirements of Determination of Water Right 3655-BD and Replacement Plan No. 2, specifically, that water use shall not exceed 1.0 acre-feet annually for each of 2 wells located on each of the 2 lots in the subdivision; and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years.

B. Prior to final plat recording, Applicant shall upload to eDARP proof that Well Permit No. 83066-F has been cancelled as required by Replacement Plan No. 2.

C. The County prefers that when there is a plan for replacement, Applicant create a homeowners’ association (“HOA”); however, alternatively to establishing an HOA, especially for minor subdivisions such as this, Applicant shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2, as well as their obligations to comply with the plan for replacement, including, but not limited to, ensuring 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. The Covenants more specifically shall require the Dawson aquifer wells to serve on each lot an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is

allowed from the wells. In addition, the Covenants shall advise future lot owners of this subdivision and their successors and assigns of their obligations regarding costs of operating the plan for replacement. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the plan for replacement, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 600 acre-feet (300 acre-feet per lot) of not-nontributary Dawson aquifer water pursuant to Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2, to satisfy El Paso County's 300-year water supply requirement for the 2 lots of the Colvin Heritage Farms Minor Subdivision.

2) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems during 300 years of pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be sold, traded or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from 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) 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 Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2 and the water rights 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) The Covenants shall advise future lot owners of this subdivision and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the existing Dawson aquifer wells.

5) 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 Colvin Heritage Farms Minor Subdivision pursuant to the plan for replacement in Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2. Further, written approval of the 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, with prior notice to the El Paso County Planning and Community Development for an opportunity for the County to participate in any such adjudication.”

6) The Covenants shall address termination using the following language:

“These Covenants shall not terminate unless the requirements of Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2 are also terminated by order of the Commission, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County.”

D. Applicant or its successors and assigns shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 1.0 acre-feet per lot annually and shall reserve a total decreed amount of at least 2.0 acre-feet of Dawson aquifer water for the 2 lots in the subdivision for 300 years for a total of 600 acre-feet for the 2-lot subdivision for 300 years. 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. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners pursuant to Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2. Applicant or its successors and assigns, shall at the time of lot sales, convey by warranty deed to individual lot owner(s) sufficient water rights in the Dawson aquifer underlying the lots to satisfy El Paso County’s 300 year water supply requirement. Dawson aquifer requirements for each lot are as follows: 300 acre-feet for each lot (1.0 acre-feet/year x 300 yrs.). Said conveyance instruments 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 and replacement during pumping for the respective lots. Applicant shall provide said Covenants or other such reservation instrument and form deeds for such conveyances 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 minor subdivision plat.

Any and all conveyance instruments shall 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 supply, and replacement during pumping, for each of the 2 lots of the Colvin Heritage Farms 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."

E. Applicant or its successors and assigns shall submit Declaration of Covenants, Conditions, and Restrictions 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 before the final plat will be recorded. Said Declaration shall cross-reference Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2 and shall identify the obligations of the individual lot owners thereunder.

F. Applicant or its successors and assigns shall record all applicable documents, including, but not limited to, Colorado Ground Water Commission Determination 3655-BD and Replacement Plan No. 2, 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.

G. As further noted by the State Engineer's Office, 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 No. 2 - Determination No.: 3655-BD
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Designated Basin Summary Table for Kevin and Michelle Colvin
Pumping Rate of 2 acre-feet per year for 300 Years from the Dawson aquifer
Section(s): Section 15, T12S, R65W, 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	2.0	0.0000	0.00	155	2.0	0.0291	1.45
10	2.0	0.0001	0.01	160	2.0	0.0304	1.52
15	2.0	0.0003	0.01	165	2.0	0.0317	1.58
20	2.0	0.0005	0.03	170	2.0	0.0329	1.65
25	2.0	0.0009	0.04	175	2.0	0.0342	1.71
30	2.0	0.0013	0.07	180	2.0	0.0355	1.77
35	2.0	0.0019	0.09	185	2.0	0.0367	1.84
40	2.0	0.0025	0.13	190	2.0	0.0380	1.90
45	2.0	0.0033	0.16	195	2.0	0.0392	1.96
50	2.0	0.0041	0.20	200	2.0	0.0405	2.02
55	2.0	0.0050	0.25	205	2.0	0.0417	2.09
60	2.0	0.0059	0.30	210	2.0	0.0429	2.15
65	2.0	0.0069	0.35	215	2.0	0.0442	2.21
70	2.0	0.0080	0.40	220	2.0	0.0454	2.27
75	2.0	0.0091	0.45	225	2.0	0.0466	2.33
80	2.0	0.0102	0.51	230	2.0	0.0478	2.39
85	2.0	0.0114	0.57	235	2.0	0.0490	2.45
90	2.0	0.0126	0.63	240	2.0	0.0502	2.51
95	2.0	0.0138	0.69	245	2.0	0.0514	2.57
100	2.0	0.0150	0.75	250	2.0	0.0526	2.63
105	2.0	0.0163	0.81	255	2.0	0.0538	2.69
110	2.0	0.0175	0.88	260	2.0	0.0549	2.75
115	2.0	0.0188	0.94	265	2.0	0.0561	2.80
120	2.0	0.0201	1.00	270	2.0	0.0573	2.86
125	2.0	0.0214	1.07	275	2.0	0.0584	2.92
130	2.0	0.0227	1.13	280	2.0	0.0596	2.98
135	2.0	0.0239	1.20	285	2.0	0.0607	3.04
140	2.0	0.0252	1.26	290	2.0	0.0619	3.09
145	2.0	0.0265	1.33	295	2.0	0.0630	3.15
150	2.0	0.0278	1.39	300	2.0	0.0641	3.21

Created by AAT on November 27, 2019
Values for 'Depletion as a % of Pumping' (q/Q) are not calculated when the pumping rate (Q) is changed to anything but zero