



EL PASO COUNTY

Office of the County Attorney
Civil Division

KENNETH R. HODGES, COUNTY ATTORNEY

Nathan J. Whitney, First Assistant County Attorney | Steven A. Klaffky, Chief Deputy County Attorney

September 23, 2026

SF-26-6 Elk Ridge Estates

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 Elk Ridge Estates, an application by Elk Ridge Developments LLC ("Applicant") for a 6-lot subdivision on a parcel of 17.1 +/- acres of land (the "property"). The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the *Water Supply Information Summary* ("WSIS"), the water demand for the 6 residential lots is estimated to include household use only of 1.56 acre-feet/year (0.26 acre-feet/year per lot). All other uses are prohibited. Based on this total demand, Applicant must be able to provide a supply of 468 acre-feet of water (1.56 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 Denver aquifer as provided in the Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 2 Case No. 2025CW3026 ("Decree and Augmentation Plan"), permitting a total withdrawal of 468 acre-feet per year of groundwater from the Denver aquifer. The proposed water supply for Elk Ridge Estates are wells not yet constructed operating pursuant to the Decree and Augmentation Plan.

The approved Decree and Augmentation Plan has a term of 300 years and requires that return flows from in-house use of groundwater shall occur through individual on-lot non-evaporative septic systems to augment depletions to affected stream systems during pumping. The Applicant must reserve the entirety of the nontributary Laramie-Fox Hills decreed herein (486 acre-feet) for the purpose of replacement of injurious post-pumping depletions.

State Engineer's Office Opinion

4. In a letter dated September 4, 2026, the State Engineer stated that the proposed water supply for the 5 lots includes individual on lot wells producing from the not-nontributary Denver aquifer operating pursuant to the augmentation plan in case no. 25CW3026. The wells are permitted to draw up to 0.26 acre-feet/year for 300 years per well.

Finally, the State Engineer provided their opinion, “. . . 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.”

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for Elk Ridge Estates is 1.56 acre-feet per year. This results in a demand of 468 acre-feet for the subdivision for 300 years. Under the Decree, Applicant owns the right to withdraw up 1.56 acre-feet per year based on a 300-year allocation for use within the subdivision.

Based on the water demand of 468 acre-feet total or 1.56 acre-feet/year (0.26 acre-feet per lot per year) for Elk Ridge Estates and the right to withdraw up to 1.56 acre-feet per year from the Denver aquifer, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Elk Ridge Estates.

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 August 2026, the *Water Supply Information Summary*, the *State Engineer's Office Opinion* dated September 4, 2026, and Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 2 Case No. 2025CW3026. 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 of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 2 Case No. 2025CW3026 including that water withdrawn from the Denver aquifer shall not exceed

468 combined acre-feet per year for 300 years. At least four percent (4%) of the allowed amount of water withdrawn annually must be returned to the aquifer.

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 for the property.

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

Covenants shall specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 468 acre-feet of nontributary Denver aquifer water and 486 acre-feet of Laramie-Fox Hills aquifer water pursuant to the Decree to satisfy El Paso County's 300-year water supply requirement for the 6 lots utilizing the Denver aquifer in Elk Ridge Estates. The Covenants shall further identify that 78 acre-feet (0.26 acre-feet/year) of Denver aquifer water is allocated to each lot. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply and augmentation requirements.

2) Advise of responsibility for costs. The Covenants shall advise the HOA, lot owners and their successors and assigns of their obligations regarding the costs of operating the plan for augmentation, which include pumping of the Denver wells in a manner to replace depletions during pumping and the cost of drilling 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 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 and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. 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 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 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 lot owners of this subdivision and their successors and assigns of their responsibility for any metering, data collecting, and reporting that may be required regarding water withdrawals from future wells in the Denver and Laramie-Fox Hills aquifers.

6) Indoor use only. The Covenants shall advise the HOA, future lot owners of this subdivision and their successors and assigns that only indoor water use is allowed. All water usage for anything other than indoor use is prohibited to include irrigation, outdoor watering and stock watering.

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 Elk Ridge Estates pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation Case No. 2025CW3026. 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 Decree.”

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 of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 2

Case No. 2025CW3026 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.”

D. Applicant and its successors and assigns shall reserve in any deeds of the property Denver aquifer water in the decreed amount of 468 acre-feet (0.26 acre-feet per year per lot). 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. Sufficient water rights are 78 acre-feet (0.26 acre-feet/year x 300 years) of Denver aquifer water for each lot of Elk Ridge Estates.

Any and all conveyance instruments shall also recite as follows:

For the water rights conveyed for the primary supply (Denver aquifer): “These water rights conveyed are intended to provide a 300-year water supply to each of the lots of Elk Ridge Estates. The water rights so conveyed 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 shall convey by recorded warranty deed the reserved Laramie-Fox Hills aquifer water to the HOA. The deed shall recite as follows:

“These water rights are intended to augment the post-pumping depletions of Elk Ridge Estates pursuant to the requirements of Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation Case No. 2025CW3026 and may not be used, conveyed, sold, traded, bartered, assigned, or encumbered, in whole or in part, for any other purpose unless authorized by the Division 2 Water Court.”

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 of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 2 Case No. 2025CW3026 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 Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree of Water Court: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation Case No. 2025CW3026, 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. Applications for well permits submitted by persons other than the Applicant must include evidence that the permittee has acquired the right to the portion of the water being requested.

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: Lacey Dean, Project Manager, Planner