

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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High View Estates – Preliminary Plan  
SP-22-6

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

1. This is a subdivision proposal by Collin Brones and Paul Smith (“Applicant”) for a 5-lot subdivision on a parcel of 40 +/- acres of land (the “property”). There is an existing residence and existing well on the property which will continue to be utilized. 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 subdivision is 5.0 acre-feet/year, reflecting 0.25 acre-feet/lot for household use (1.25 acre-feet total), plus 3.2 acre-feet/year for irrigation and 0.55 acre-feet/year for stock watering equating to 1.0 acre-feet/year for each lot. Based on this total demand, Applicant must be able to provide a supply of 1,500 acre-feet of water (5.0 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 in the not nontributary Dawson aquifer as provided in Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Division 1 Case No. 21CW3119 (“Case No. 21CW3119”, “Decree” or “Augmentation Plan”). The Decree was granted to Collin Brones on March 9, 2022.

The Decree adjudicated 3,800 acre-feet of Dawson-aquifer water underlying the 40-acre property.<sup>1</sup> Pursuant to the Augmentation Plan, the “Brones Wells will pump a maximum of 5.0 acre-feet of water per year from the Dawson aquifer. Indoor use will utilize an estimated 0.25 acre-feet of

<sup>1</sup> Note: The Decree also adjudicated water in the following aquifers: Denver (3,300 acre-feet), Arapahoe (1,730 acre-feet), and Laramie-Fox Hills (1,200 acre-feet).

water per year per residence, with the remaining 0.75 acre-feet per year pumping entitlement available for other uses on the Applicant's Property, including, irrigation of lawn and garden and the watering of domestic animals and livestock."

#### State Engineer's Office Opinion

4. In a letter dated August 1, 2022, the State Engineer stated the estimated water requirements are 5.0 acre-feet/year, which reflects 1.0 acre-feet/lot based on household use, irrigation of 1.28 acres of lawns and gardens and watering of 10 large domestic animals for the subdivision. The State Engineer noted that "[t]he plan for augmentation approved in case no. 2021CW3119 allows for an average withdrawal of 5 acre-feet annually from the Dawson aquifer for a maximum of 300 years." Further, the State Engineer identified an existing well on the property (Well Permit No. 130940) which will continue to be utilized on Lot 1. On 6/1/22, Applicant's well was re-permitted as Well Permit No. 87040-F.

Finally, the State Engineer provided their opinion that "pursuant to 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. Our opinion that the water supply is adequate is based on our determination that the amount of water required annually to serve the subdivision is currently physically available, based on current estimated aquifer conditions."

#### Recommended Findings

5. Quantity and Dependability. Applicant's water demand for the High View Estates Subdivision is 5.0 acre-feet per year for a total demand of 1,500 acre-feet for the subdivision for 300 years. The Decree and Augmentation Plan in Case No. 21CW3119 permits withdrawal of 5.0 acre-feet/year (1,500 acre-feet total) of Dawson-aquifer water for a period of 300 years.

**Based on the water demand of 5.0 acre-feet/year for the High View Estates Subdivision and Case No. 21CW3119 permitting withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the High View Estates Subdivision.**

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: The Water Supply Information Summary provided on July 19, 2022, a Water Resources Report from Monson, Cummins, Shohet & Farr, LLC dated March 11, 2022, the State Engineer's Office Opinion dated August 1, 2022, and Decree and Augmentation Plan in Case No. 21CW3119 issued on March 9, 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 the Decree and Augmentation Plan in Case No. 21CW3119. Water use shall not exceed 5.0 acre-feet annually for the 5-lot subdivision for a period of 300 years. Stream depletions shall be replaced with non-evaporative septic system return flows for a period of 300 years pursuant to the Court's approved augmentation plan.

B. The County requires that when there is a plan for augmentation, Applicant 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.

C. 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 the Decree and Augmentation Plan in Case No. 21CW3119.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 1,500 acre-feet of non nontributary Dawson aquifer water and 1,500 acre-feet of nontributary Denver aquifer water pursuant to Case No. 21CW3119. The Covenants shall further identify that 300 acre-feet (1.0 AF/year) of Dawson aquifer water and 300 acre-feet of Denver aquifer water is allocated to each residential 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 water supply.

2) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Denver 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 deletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state hat 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 have an occupied single-family dwelling that is generating return

flows from a non-evaporative septic system before any irrigation or animal watering is allowed. 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 Case No. 21CW3119 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 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 wells in the Dawson and/or Denver aquifers.

6) Require well permits. The Covenants shall require that well permits be obtained pursuant to the requirements of Division 1 Case No. 21CW3119 and C.R.S. § 37-90-137.

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 High View Estates Subdivision pursuant to Case No. 21CW3119. 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 Division 1 Water Court 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 Case No. 21CW3119 are also terminated by the Division 1 Water Court 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 Dawson aquifer water in the decreed amount of 300 acre-feet (1.0 AF/year for 300 years) and Denver aquifer water in the decreed amount of 300 acre-feet 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 and replacement supply.

E. Applicant and its successors and assigns shall convey by recorded warranty deed those reserved Dawson and Denver aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson and Denver aquifers to satisfy El Paso County's 300-year water supply requirement.

Any and all conveyance instruments shall also 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 water supply, and replacement during pumping, for each of the lots of the High View Estates 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.”

F. 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 Case No. 21CW3119 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, Case No. 21CW3119, 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. Prior to recording the final plat – Applicant shall upload to eDARP the following:

1. A copy of Well Permit No. 87040-F;
2. A corrected Water Resources Report indicating on page 2, paragraph 3, that there are five individual wells in the Dawson aquifer (not three).

I. 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: Kylie Bagley, Planner II