

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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Judge Orr Ranchettes
Final Plat – SF-17-021

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney
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FINDINGS AND CONCLUSIONS:

1. This is a final plat proposal by John and Linda Jennings (“Applicant”) for a 7-lot subdivision on a parcel of approximately 40.67 acres (the “Property”). There is a concurrent zoning request to rezone the property from A-35 (Agricultural) to RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells as provided through the Determination of Water Right No. 679-BD (“Determination”). The Applicant estimates its annual water requirements to serve the 7 single-family lots at 4.9 acre-feet annually (0.7 acre-feet per lot). Pursuant to the Water Supply Information Summary (“WSIS”), the water demand is 1.40 acre-feet for household use (0.2 ac.-ft./lot) and up to 3.5 acre-feet (0.5 ac.ft./lot) for any combination of uses, which may include irrigation, stock watering, commercial, industrial, and replacement uses, for a total of 4.9 acre-feet annually for the 7 lot subdivision. The Applicant will need to provide a supply of 1,470 acre-feet of water (4.9 acre-feet/year x 300 years) to meet El Paso County’s 300-year water supply requirement. **The Determination requires at least 4% of the amount of water withdrawn annually be returned to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal, which would be 0.028 acre-feet annually per lot based on an annual withdrawal of 0.7 acre-feet. This 4% must be included in, and accounted for, in the 0.7 acre-feet annual demand for each lot owner.**

NOTE: The Determination authorizes, and the WSIS indicates, that the water can be used for various uses including commercial and industrial; however, any commercial or industrial uses on the property for which the water might be used would have to comply with the uses allowed in the RR-5 zoning district.

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3. In a letter dated July 12, 2019, the State Engineer reviewed the submittal to plat the approximately 40.67 +/- acre parcel into a 7 lot subdivision. The State Engineer reviewed the WSIS, the Determination, and the Report dated June 6, 2019, provided by GroundWater Investigations, LLC ("Report"). The Engineer stated that the "proposed source of water supply is individual on-lot wells producing from the not-nontributary (4% replacement) Denver aquifer pursuant to Determination of Water Right No. 679-BD." As explained by the State Engineer, the water supply available to the Applicant encompasses the "Denver aquifer underlying 139.25 acres including the subject 40.67 acres, and allows the withdrawal of 46.3 acre-feet of water annually for domestic, stock watering, irrigation, commercial, industrial, and replacement uses on the 139.25 acres. The Applicant claims ownership of 14.70 acre-feet per year from the Denver aquifer in Determination of Water Right No. 679-BD ..." The State Engineer stated, "the allowed average annual amount of withdrawal of 14.7 acre-feet/year from the Denver aquifer from 679-BD aquifer for a maximum of 100 years would be reduced to one-third of those amounts, or 4.9 acre-feet/year. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years, and is sufficient to supply the requirement of 4.9 acre-feet/year." Regarding the 4% replacement required by the Determination, the Engineer stated: "**[t]o meet the 4% return flow from the in house use of water must be through an individual waste water disposal system of a non-evaporative type.**" (Emphasis added). Finally, the State Engineer stated that "pursuant to Sections 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 water rights."

4. As described in the Report, the original owners of the water rights that were the subject of the Determination were Robert and Steven Gieck. They conveyed the subject water rights in 2005 by Special Warranty Deeds to Dakota Montgomery Companies, Inc., who received an undivided 37% interest as tenant in common, and TKO Development, LLC, who received an undivided 63% interest as tenant in common. Dakota Montgomery Companies, Inc., conveyed by Quitclaim Deed in 2018, 16.98 acre-feet annually of the subject Denver aquifer water right to John and Linda Jennings (the Applicant). Upon discovery by the County Attorney's Office that there was no deed conveying TKO Development's 63 % of the Denver aquifer water rights to the Applicant, Applicant obtained a Quitclaim Deed from TKO Development, and recorded the same, on August 2, 2019, which conveys to Applicant TKO's 63% interest in the Denver aquifer water rights adjudicated in the Determination (63% of 16.98 acre-feet or 10.7 acre-feet annually (100 years)). The Jennings conveyed in 2018 by Quitclaim Deed a portion of their property and 2.28 acre-feet annually of their 16.98 annual acre-feet of Denver aquifer water to another property owner, resulting in their remaining ownership of 14.70 annual acre-feet of Denver aquifer water, based on 100 years or 4.9 acre-feet based on 300 years.

5. Analysis. Applicant's total water demand for the Judge Orr Ranchettes Subdivision is 4.9 acre-feet/year. The Determination provides an available water supply from the Denver aquifer of 46.3 acre-feet for 139.25 acres. Based on conveyances of

property and water rights, Applicant has a supply of 14.7 acre-feet annually of Denver aquifer water based on 100 years or 4.9 acre-feet annually for 300 years. Based on the permitted withdrawal of 4.9 acre-feet annually for 300 years, and an annual water demand of 4.9 acre-feet, there appears to be a sufficient water supply to meet the demands of the Judge Orr Ranchettes Subdivision utilizing the Denver aquifer water supply when operated in compliance with the Determination. **Lot owners will have to meet the 4% replacement requirement of the Determination from the 0.7 acre-feet annual demand allocated for each lot.**

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

7. Therefore, based on the finding of sufficiency and no injury by the State Engineer, the requirements of Determination of Water Right No. 679-BD (including the 4% replacement requirement), 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 when operated in compliance with the Determination. The El Paso County Public Health Department will need to provide an opinion as to quality.

REQUIREMENTS:

A. When Applicants, their successors and assigns, convey the Property, then at the time of each lot sale, they shall convey by warranty deed to individual lot owner(s) sufficient water rights in the not nontributary Denver aquifer pursuant to Determination of Water Right No. 679-BD underlying the respective property to satisfy El Paso County's 300 year water supply requirement: Denver aquifer requirements for each lot are 210 acre-feet (0.7 acre-feet/lot/year x 300 years). **Said conveyance instrument shall recite that the annual withdrawal is 0.7 acre-feet, from which the lot owner is responsible for meeting the annual 4% replacement required by the Determination (0.028 acre-feet annually).** Said 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 and replacement requirements for the lot. Applicant shall provide a form warranty deed for review and approval to the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat.

B. Applicants, their successors and assigns, shall create restrictive covenants, Declaration of Covenants, Conditions, and Restrictions, upon and running with the property which shall advise and obligate future lot owner(s) of this subdivision, their successors and assigns, regarding all applicable requirements of the Colorado Ground Water Commission Determination of Water Right No. 679-BD, **specifically including the 4% replacement requirements to be met by returning to the uppermost aquifer in the vicinity of the permitted point or points of withdrawal**, as well as their obligations to comply with the Determination and their responsibility for any metering and data

collecting that may be required regarding water withdrawals from wells. **Said Covenants shall also ensure that return flows by the use of non-evaporative septic systems are made to address the 4% replacement requirement**, and that such return flows shall only be used for replacement purposes 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 construction of wells to withdraw water only from the Denver aquifer, as required by the Determination.

C. Applicant shall submit the 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 must be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat. Said Covenants shall cross-reference the Determination and shall recite the obligations of the individual lot owners under the same.

D. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, Determination of Water Right No. 679-BD, 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.

E. 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: Nina Ruiz, Project Manager, Planner III