

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY
CIVIL DIVISION

First Assistant County Attorney
Diana K. May

Amy R. Folsom, County Attorney

Assistant County Attorneys
M. Cole Emmons
Lori L. Seago
Kenneth R. Hodges
Lisa A. Kirkman
Steven A. Klaffky
Peter A. Lichtman

April 15, 2019

Hannah Ridge at Feathergrass Filing Nos. 5, 6, and 7 (Final Plats)
File Nos. SF-18-38, SF-18-39, SF-18-40

Reviewed by: M. Cole Emmons, Senior Assistant County Attorney
Edi Anderson, Paralegal

NOTE: The State Engineer's Office ("SEO") issued water opinions for Hannah Ridge Filing Nos. 5, 6 & 7 in November 2018, but based on the Applicant's demand of 0.42 acre-feet/lot/year, the SEO only could find sufficiency for Filings 5 and 6. Cherokee Metropolitan District submitted new engineering reports with new demand figures to the SEO that reduced the demand to 0.31 acre-feet/year/lot. The SEO used these numbers and prepared a new composite water opinion for Hannah Ridge at Feathergrass Filing Nos. 1-7 and the Shops, in which the SEO found the developments could be supplied without injury to existing water rights. Cherokee had to then provide new commitments to serve based on the new demand figures, which the County Attorney's Office received on April 10. Given the composite review by the SEO, the revised commitment letter for all 3 filings by Cherokee, and the same sources of renewable water for all 3 filings, this water review will cover Filings 5, 6 & 7, with a recommendation for sufficient quantity and dependability.

1. This is a proposal by Feathergrass Investments, LLC ("Applicant") for approval of Final Plats for Filing Nos. 5, 6, and 7, of the Hannah Ridge at Feathergrass subdivision. The property is zoned PUD. The acreage and number of lots for each Filing is noted below:

Filing No.	Total acres in Filing	Number of Lots
5	12.92 +/-	55
6	7.94 +/-	33
7	13.71 +/-	81

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

2. The Applicant has provided that the source of water for the subdivision will derive from the Cherokee Metropolitan District ("District"). Sand Creek Investments North, LLC, entered into Assignment of Water and Sewer Service Agreements with Feathergrass Investments, LLC, whereby Sand Creek assigned all of its rights and obligations under its Agreements with the District to Feathergrass and Feathergrass accepted the same. These Agreements provided two sources of water to the District for use in Applicant's developments: 76.0 acre-feet of Tipton Well water and 60.5 acre-feet of the Kane Water Right for a total of 136.5 acre-feet of water. Because the State Engineer has determined that both water sources are annually renewable, pursuant to § 8.4.7.B.9.a.i, LDC, the water supply is presumed to meet the County's 300 year aquifer life requirement.

3. **State Engineer's Office.** The State Engineer addressed the water demands for all 3 filings in separate letters for each filing dated November 19, 2018. In a subsequent letter dated February 13, 2019, the State Engineer collectively reviewed information for Filings 5, 6, and 7, and provided recalculated (reduced) water demand amounts from the State Engineer's previous letters.¹ Pursuant to the State Engineer's correspondence and discussion with the District's Manager, the SEO concluded the recent engineering reports supported a more conservative estimated annual water use rate of 0.31 acre-feet per household in contrast to the District's earlier estimate of 0.42 acre-feet per household. The State Engineer noted that the 0.31 acre-feet estimate was consistent with the "standard water use rate, as found in the Guide to Colorado Well Permits, Water Rights, and Water Administration." The chart below provides the initial water demand calculations from the State Engineer's November 19th letters and the revised water demand calculations reflecting the updated 0.31 acre-feet per household use estimate plus applicable irrigation amounts.

Filing No.	Initial Demand (A/F)	Revised Demand (A/F)	Park/Open Space Irrigation (acres)	Park/Open Space Irrigation (A/F)	Initial TOTAL Demand (A/F)	Revised TOTAL demand (A/F)
5	13.86	17.05	1.32	3.43	26.31	20.48
6	13.86	10.23	1.47	3.82	17.68	14.05
7	34.02	25.11	0	0	34.02	25.11

The water demands as noted by the State Engineer are further detailed as follows:

Filing No. 5

The Filing No. 5 Final Plat consists of a total of 12.92 acres +/- and a total of 55 lots. The water requirements are calculated as follows: 0.31 acre feet/yr. x 55 lots = 17.05

¹ The State Engineer also provided recalculated water demand figures for Filings 1 – 4 and Shops at Feathergrass. Those Filings are not addressed in this review.

acre-feet, plus irrigation of open space at 3.43 acre-feet. The total demand for Filing No. 5 is 20.48 acre-feet per year.

Filing No. 6

The Filing No. 6 Final Plat consists of a total of 7.94 acres +/- and a total of 33 lots. The water requirements are calculated as follows: $0.31 \text{ acre feet/yr.} \times 33 \text{ lots} = 10.23/\text{acre-feet}$, plus irrigation of open space at 3.82 acre-feet. The total demand for Filing No. 6 is 14.05 acre-feet per year.

Filing No. 7

The Filing No. 7 Final Plat consists of a total of 13.71 acres +/- and a total of 81 lots. The water requirements are calculated as follows: $0.31 \text{ acre feet/yr.} \times 81 \text{ lots} = 25.11 \text{ acre-feet}$ and no irrigation of open space. The total demand for Filing No. 7 is 25.11 acre-feet per year.

The State Engineer indicates that the running total of demand for all of the Hannah Ridge at Feathergrass Filings (including Shops at Feathergrass) is 119.35/acre-feet per year.

The State Engineer described the sources of water for the District. The first source of the District's water is the Kane Water Right.

"The 'Kane No. 1 Water Right' is not a separate water right, but rather a contractual water right for a portion of water removed under contract from the Sweetwater Well Field operated by Cherokee. The Kane Water Right is not viewed by this office as a commitment from Cherokee, but a pre-existing 'first-in-line' delivery that Cherokee accepted upon assuming control of the Sweetwater Well Field. Since Sweetwater Nos. 1-3, 5, 8-9, 11, 13 and 15-16 are currently the only wells that may legally be used to supply water outside of the Designated Basin, the State Engineer's Office based its opinion on the understanding that the 200 acre-feet would come from Sweetwater Nos. 1-3, 5, 8-9, 11, 13 and 15-16."

The second source of water is the Tipton Water.

"The second source of water is 76 acre-feet per year of Tipton Water, as documented by the December 4, 2006 'Water and Sewer Service Agreement' between Cherokee and Sand Creek Investments North, LLC. The 76 acre-feet is part of 225 acre-feet of fully consumable and exportable water adjudicated to the Tipton Well in Colorado Ground Water Commission Case No. 91GW01, for use and export outside of the Upper Black Squirrel Creek Designated Ground Water Basin."

The SEO indicated that based on the 60.5 acre-feet available from the Kane Water Right and the 76 acre-feet available from the Tipton Water, there is a total amount of water available to the Hannah Ridge subdivisions of 136.5 acre-feet per year. The District also committed an additional 0.62 acre-feet/year to Hannah Ridge in a commitment letter dated October 15, 2018 for a total of 137.12 acre-feet per year available to the subdivision. Pursuant to the State Engineer's updated calculations, 59.71 acre-feet has already been committed to the other Filings in Hannah Ridge at Feathergrass (and Shops at Feathergrass). Based on the calculations of the State Engineer and the water rights owned by the District, the State Engineer provided the opinion that pursuant to "Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply for Filing Nos. 1-7 and Shops of Hannah Ridge at Feathergrass can be provided without causing injury to decreed water rights and is expected to be adequate." Finally, the Engineer notes that the Sweetwater Wells and the Tipton Well are constructed into the Quaternary alluvium, which is considered annually renewable.

NOTE: The State Engineer's Office also provided an advisory to the Applicant related to any onsite drainage/water quality pond that may be part of the project. The Engineer advised the Applicant that ". . . unless the proposed improvements to the existing storm water structure can meet the requirements of a 'storm water detention and infiltration facility' . . . the structure may be subject to administration by this office. The applicant should review the *DWR's Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado* . . . to ensure that the notice, construction and operation of the proposed structure meets statutory and administrative requirements."

4. **Cherokee Metropolitan District.** The General Manager of the District provided letters of commitment for the Hannah Ridge subdivision, including Filing 5 (October 15, 2018), Filing 6 (August 17, 2018), and Filing 7 (August 17, 2018). The letters set forth a water demand of 0.42/acre-feet/lot for the Hannah Ridge at Feathergrass subdivision. Based on his correspondence and conversations with the State Engineer's Office, the District Water & Wastewater Collections Manager provided a confirming letter of commitment dated April 10, 2019, confirming the calculations set forth in the State Engineer's February 13, 2019 letter. See letters from the District and the State Engineer's Office attached hereto as Exhibits A and B, respectively. The District letter stated "the District stands ready and willing to provide water and sewer service for the specific properties [Filings 5, 6, and 7] and uses detailed herein." Further, "[t]his revised commitment letter addresses the revised water demand calculations and statements of water sufficiency determined by the State Engineer's Office in a letter dated February 13, 2019." The County Attorney's Office considers the District's revised commitment letter and the references therein to the revised demand

figures in the SEO's February 13, 2019 letter, together to constitute a firm commitment to serve by the District.

5. **Water Quality.** Section 8.4.7(B)(10)(g), of the El Paso County Land Development Code allows for the presumption of acceptable water quality for projects such as this where water is supplied by an existing Community Water Supply operating in conformance with Colorado Primary Drinking Water Regulations unless there is evidence to the contrary that may be provided by the El Paso County Health Department.

6. **Analysis and Recommendation.** Cherokee Metropolitan District has a total of 137.12 acre-feet of annual water supply available for the Hannah Ridge at Feathergrass subdivision which was contracted by the District as part of the Kane Water Right (60.5 acre-feet) and the Tipton Water (76 acre-feet) (total of 136.5 acre-feet) and an additional commitment of 0.62 by the District pursuant to their commitment letter of October 15, 2018. Based on the recalculated amounts of water demand required for Filing 5 (20.48 acre-feet/year), Filing 6 (14.05 acre-feet/year), and Filing 7 (25.11 acre-feet/year), there is a total annual water demand of 59.64 acre-feet/year inclusive of the 3 Filings. The State Engineer's calculations indicate a running total of water demand for all the Hannah Ridge Filings of 119.35 acre-feet; therefore, there is a remaining surplus of 17.77 acre-feet available to the District. Therefore, based on the finding of sufficiency and no injury to existing water rights by the State Engineer, on the commitment to serve by the District, and subject to the conditions set forth below, the County Attorney's Office recommends a finding of **sufficiency** as to water quantity and dependability for the proposed total of 169 single-family lots for Hannah Ridge at Feathergrass Filing Nos. 5, 6, and 7. The El Paso County Health Department may confirm that the District is in compliance with the water quality regulations.

CONDITION OF COMPLIANCE:

- A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, and specifications set by the District, including the District's requirement that the project "must achieve appropriate zoning and a final plat land use entitlement from the El Paso County Development Services within 12 months of the date of this letter" [letter dated April 10, 2019].
- B. It is Applicant's responsibility to comply with the advisory by the State Engineer's Office regarding its onsite drainage/water quality pond to ensure that the structure meets the requirements of a 'storm water detention and infiltration facility' and that notice, construction and operation of the proposed structure meets statutory and administrative requirements.

C. Applicant is required to submit updated Water Supply Information Summary forms for each filing prior to the subdivision approval request being heard before the Board of County Commissioners.

cc: Kari Parsons, Project Manager, Planner II