

WORLEY LAW FIRM, LLC

Henry D. "Hank" Worley  
611 North Weber St., Ste. 104  
Colorado Springs, CO 80903

Phone: 719.634.8330 / Fax: 719.471.3814 / Email: [hank.worley@pcisys.net](mailto:hank.worley@pcisys.net)

April 4, 2017

Mr. Cole Emmons  
County Attorney's Office  
200 South Cascade Ave., Suite 150  
Colorado Springs, CO 80903

RE: Water Resource Report for Settlers View Subdivision

Dear Mr. Emmons:

I have 30 years' experience in Colorado water rights work. I have obtained decrees approving over 100 plans for augmentation utilizing Denver Basin water rights. Though I am not an engineer, I feel that my years of experience enable me to provide the information required by the State Engineer as set forth in § 8.4.7 (3)(e), El Paso County Land Development Code.

The land which is proposed to be subdivided into 14 lots to be called the Settlers View subdivision consists of 40.61 acres described as the SW1/4 NE1/4 NE1/4, the E1/2 SW1/4 NE1/4, and the NW1/4 SE1/4 NE1/4 Section 23, T. 11 S., R. 66 W., 6<sup>th</sup> P.M. (the "Property"). A reduced-scale plat map of the proposed subdivision plat is attached hereto as Figure 1. A portion of a USGS map upon which the approximate boundaries of the Property are shown is also attached as Exhibit A.

In regard to part 6 of the Water Supply Information Summary, the Property is a part of a much larger parcel of land which was owned by the parents of Brenda Brinkman, who is one of the current owners of the Property. Mrs. Brinkman's mother, E. Pearl Swanson conveyed the Property to Mr. and Mrs. Brinkman in 2001; a copy of that deed is submitted herewith.

The Property is currently owned by Gary L. Brinkman and Brenda L. Brinkman. It is under contract to be conveyed to Jacqueline Y. Maher and Gary T. Maher or their assigns. For purposes of simplicity, these persons will simply be referred to as "Owners" unless the context requires otherwise.

The contract provides that all of the water and water rights decreed in Consolidated Case Nos. 11CW145 and 11CW023, entered by the Water Court for Water Division 1 on September 8, 2011 (the "Water Decree"), will be conveyed to Jacqueline Y. Maher and Gary T. Maher or their assigns.

The Water Decree adjudicated to Gary L. Brinkman and Brenda L. Brinkman the following water rights in the Denver Basin aquifer underlying the Property:

- 4,960 acre feet of water and water rights in the not nontributary Dawson aquifer;
- 3,706 acre feet of water and water rights in the nontributary Denver aquifer;
- 1,632 acre feet of water and water rights in the nontributary Arapahoe aquifer;
- 1,200 acre feet of water and water rights in the nontributary Laramie-Fox Hills aquifer.

The Water Decree also approved a plan for augmentation. All of the water rights decreed in the Water Decree will be conveyed to the Mahers.

The plan for augmentation allows up to 15 wells in the Dawson aquifer to be used on the Property. The Owners have elected to pursue approval of only 14 lots and 14 Dawson aquifer wells. An existing Dawson aquifer well, permit no. 75798-F, may pump 1.0 acre foot (325,851 gallons) annually. Each additional Dawson aquifer well will be allowed to pump 0.97 acre foot (316,075 gallons) annually. The pumping rate for each Dawson aquifer well shall be limited to 15 gallons per minute. The location of the existing Dawson aquifer well is shown on the attached plat map.

The plan for augmentation allows the Dawson aquifer wells to be used for indoor uses in a single family dwelling on each lot, for commercial uses (drinking and sanitation uses), for a stand-alone office or guest cottage, for a hot tub/spa and/or swimming pool, for stock water, and for landscape irrigation. In addition, septic system return flows from indoor uses will be used to augment depletions which occur during the 300 year pumping period.

As set forth in the attached Water Supply Information Summary, the Owners estimate that the annual water demands for the fourteen lots in the subdivision will average:

- 3.64 acre feet annually for indoor sanitary and drinking purposes, based on 0.26 acre foot annually per lot;
- 3.15 acre feet for irrigation purposes, based on 0.225 acre foot annually for irrigation of approximately 4,356 square feet of landscaping per lot, at a rate of 2.25 acre foot per acre;
- 0.345 acre feet annually for livestock watering, based on 11 gallons per animal per day and two animals per lot, on average);
- 6.475 acre feet for other uses,<sup>1</sup> which could include more water for the uses specified above, or for other unspecified uses. As a matter of actual fact (as opposed to alternative fact), it is my expectation that very few lot owners will pump their entire annual allowed amount of

---

<sup>1</sup> For permit no. 75798-F, the "extra" water will equal 0.49 acre feet rather than 0.46.

water over the next 300 years.

Though the Water Decree approved the construction of up to 15 Dawson aquifer wells, it also anticipated the possibility that approval will be sought for only 14 lots and 14 Dawson aquifer wells. In the event of 14 wells, as is the case here, annual pumping from the combined 14 Dawson wells will be limited to 13.6 acre feet (1.0 acre foot from permit no. 75798-F and 0.97 acre foot from each of the remaining 13 wells) and total pumping is limited to 4,081 acre feet.

The decree was designed so that as long as there is a residence on each lot which is permanently occupied, and annual water use on each lot does not exceed 0.97 acre foot (1.0 acre foot for permit no. 75798-F), the septic system return flows will be sufficient to replace all depletions which occur each year during the 300 year pumping period.

Gary and Brenda Brinkman live in a home on what will become Lot 2 of Settlers View subdivision; they obtain their water from permit no. 75798-F. In correspondence with Brenda Brinkman, she indicated that since the approval of the Water Decree, they have been the only persons living in the home, that their irrigation use is very minimal (no turf grass), and that they have watered about 30 head of cattle on the property for six weeks each year. Based on this information, I estimate that during the six years subsequent to entry of the Water Decree, their water use has not exceeded 2.0 acre feet.

At the time of closing of the real estate contract, the Mahers shall convey back to the Brinkmans 298 acre feet of water and water rights in the Dawson aquifer (300 acre feet minus an estimated 2.0 acre feet previously pumped), and shall convey to them an equitable 1/14th interest in the plan for augmentation. At the initial sale of each other lot in the Settlers View subdivision, the Owners shall convey to the purchasers of each such lot 291 acre feet of water and water rights in the Dawson aquifer.

In addition, the Owners shall create a homeowners association and, prior to the conveyance of any lot in Settlers View subdivision, shall convey to such association all 3,706 acre feet of the water and water rights in the Denver aquifer decreed in the Water Decree, which amount is sufficient to replace all post-pumping depletions associated with the pumping of 4,081 acre feet over a 300 year period. The Owners also shall convey to the homeowners association all right, title and interest in the plan for augmentation decreed in the Water Decree. The Owners also may, but are not required to, convey to the HOA more of the water rights decreed in the Water Decree than the minimum conveyance amounts enumerated herein.

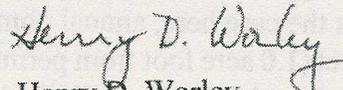
The water rights which the Owners shall convey to the individual lot purchasers and to the Settlers View Homeowners Association are sufficient to meet El Paso County's requirement of a 300 year water supply for subdivisions which rely on non-renewable ground water.

Mr. Cole Emmons  
April 4, 2017  
Page 4

Mr. Cole Emmons  
April 4, 2017  
Page 3

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely yours,

  
Henry D. Worley

attachments

c: Jerry Hannigan



