



COLORADO

Division of Water Resources

Department of Natural Resources

1313 Sherman Street, Room 821
Denver, CO 80203

November 9, 2018

Nina Ruiz
El Paso County Development Services Department
DSDcomments@elpasoco.com

RE: McCune Ranch Subdivision, Preliminary Plan
Part of Sec. 13 & 24, T11S, R65W, 6th P.M.; part of Sec. 19, T11S, R64W, 6th P.M.
Water Division 1, Water District 1
Kiowa-Bijou Designated Basin

Dear Ms. Ruiz:

We have reviewed your October 18, 2018 submittal concerning the above referenced proposal to subdivide 766.66 acres into 143 single-family lots, one (1) commercial lot, streets, open space, drainage way, and trails.

Water Supply Demand

According to the submitted Water Resources and Wastewater Report for McCune Ranch Subdivision dated October 2018 (“Water Resources Report”) the total estimated water requirement is 90.8 acre-feet/year (0.6 acre-feet/year per residential lot for a total 85.8 acre-feet/year for the 143 single family lots, and 5 acre-feet/year for the commercial lot).

Source of Water Supply

According to the Water Resources Report, the proposed source of water supply is individual on-lot wells producing from the Dawson Aquifer that would be permitted pursuant to Determination of Water Right no. 1692-BD.

Determination of Water Right no. 1692-BD was issued by the Ground Water Commission (“Commission”) on June 25, 2008 for an allowed average annual amount of withdrawal of ground water of 819 acre-feet from the Dawson Aquifer, based on an aquifer life of 100 years, to be used on 900.52 acres (which include the 766.66 acres of the subject subdivision). On March 13, 2018, the Commission approved Amendment No. 1 of Determination of Water Right no. 1692-BD which cancelled an allowed average annual withdrawal of 12 acre-feet from the Determination, leaving an allowed average annual amount of withdrawal of 807 acre-feet (based on an aquifer life of 100 years) in the Determination.

The Dawson Aquifer ground water that is the subject of Determination of Water Right no. 1692-BD is not-nontributary requiring a Commission approved replacement plan prior to its diversion. A replacement plan was approved by the Commission on June 29, 2018 allowing for the withdrawal of water through 70 wells on 70 residential lots for a period of 100 years.

In the *El Paso County Land Development Code*, effective November, 1986, Chapter 5, Section 49.5, (D), (2) states:

“- Finding of Sufficient Quantity - The water supply shall be of sufficient quantity to meet the average annual demand of the proposed subdivision for a period of three



hundred (300) years.”

As the Applicant’s existing replacement plan allows withdrawal of Dawson aquifer water for only 100 years, withdrawals under that plan would not meet the county’s requirement of providing the average annual demand of the subdivision for a period of 300 years. While the Water Resources Report states the applicant intends to amend the existing replacement plan (apparently to cover wells on all 144 proposed lots for a period of 300 years), an application to amend the replacement plan has not yet been submitted to the Commission.

The Water Resources Report makes reference to other water rights, including those in the Denver Aquifer under Determination of Water Right no. 1691-BD, but those rights are not identified as a sources of water to the subdivision.

State Engineer’s Office Opinion

Based upon the above and pursuant to Section 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply is not adequate and cannot be provided without causing injury to decreed water rights.

It appears that in order to obtain a favorable opinion from this office on the proposed water supply to the subdivision, the applicant must do the following:

1. Obtain a new replacement plan allowing withdrawals pursuant to Determination of Water Right no. 1692-BD that is sufficient to meet the proposed development’s water demands and is consistent with El Paso County’s 300 year water supply requirement.
2. Provide a water supply plan that clearly defines the proposed development’s water demands, and the water sources that will be used to meet those demands. Such plan must also be consistent with the approved replacement plan.

Additional Comments

There is an existing small-capacity Dawson Aquifer well, permit no. 162283, that is located on the subject 766.66 acres. Well permit no. 162283 was issued on a tract of 40 acres described as the NW ¼ of the SW ¼ of Sec. 19, Twp. 11 S, Range 64 W, 6th P.M., without consideration of material injury to other water rights. Upon approval of the proposed subdivision the parcel on which permit no. 162283 will be located will be smaller than the 40 acres on which the permit was issued, rendering the permit invalid, meaning the well could not continue to operate under permit no. 162283. Because the parcel on which well permit no. 162283 would be located would be within a post-June 1, 1972 subdivision, material injury to other water rights would be a consideration in re-permitting the well. Withdrawal of Dawson aquifer water from the well would impact the over-appropriated alluvial aquifer of Kiowa Creek or its tributaries, absent a replacement plan approved by the Ground Water Commission. The well could continue to operate only if it is re-permitted as a large capacity well pursuant to a Determination of Water Right and Replacement Plan approved by the Colorado Ground Water Commission. As the well is located within the proposed subdivision, the current owner/developer of the subdivision (McCune Ranch LLC) presumably owns the well. This office recommends the following.

1. The County require that either the well be plugged and abandoned or the requirement to re-permit the well be placed on the plat in a manner that is plainly visible such that the current owner and any prospective buyer will be aware of the requirement.
2. Should the well owner want to re-permit the well, prior to this subdivision being approved by the county, the county require the current well owner to submit to our office a well permit application to re-permit the well. Our office will hold that application until the required determination of water right and replacement plan have been approved, at

which time we will act upon the application.

There is another an existing small capacity Dawson Aquifer well, permit no. 309240, that claims a portion of the 766.66 acres. Well permit no. 309240 was issued on 40 acres described as the NE ¼ of the NE ¼ of Sec. 24, Twp. 11 S, Range 65 W, 6th P.M., without consideration of material injury to other water rights. While the well itself is not located on the subject 766.66 acres, the 40 acres on which it is permitted overlaps the 766.66 acres. Upon approval of the proposed subdivision the 40 aces on which permit no. 309240 was issued will no longer exist as a single tract, and the acreage on which the well will be located will be smaller than the 40 acres on which the permit was issued, rendering the permit invalid, meaning the well could not continue to operate under permit no. 309240. The ability to issue a new small capacity permit to the well is not clear, at such ability may depend on the number of acres available for assignment to a new well permit. The availability to issue a new large capacity permit to the well will depend on obtaining a determination of water right and replacement plan that include the well. While permit no. 309240 was originally issued to the owner/developer of the proposed subdivision (McCune Ranch LLC), information in our files indicates this well is no longer owned by McCune Ranch LLC, but by Matthew & Tiffany Gowler. This office recommends the following.

1. The County require that the owner/developer of the subdivision be required to arrange with the owner of the well to either plug and abandon this well, or re-permit this well.
2. Should owner of the well want to re-permit the well, prior to this subdivision being approved by the county, the county require the current well owner to submit to our office applications to re-permit the well, and any necessary applications for a determination of water rights and replacement plan. Our office will hold the application for a well permit until the required determination of water right and replacement plan have been approved, at which time we will act upon the application.

If you, or the applicant, have any questions, please contact Neelha Mudigonda at 303-866-3581 ext. 8206.

Sincerely,



Keith Vander Horst
Chief of Water Supply, Basins

Cc: Division 1
Well Permit nos.162283 and 309240
Project no. 25245

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