



Montaño • Freeman • Sinor • Thompson P.C.

Lucas O'Brien, Esq.
lobrien@troutlaw.com
303.339.5825

1120 Lincoln Street • Suite 1600
Denver, Colorado 80203-2141
303.861.1963
www.troutlaw.com

November 23, 2023

El Paso County Planning and Community Development Department
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Re: Esteban Rodriguez Sketch Plan

El Paso County Planning and Community Development Department:

This firm represents the Upper Black Squirrel Creek Ground Water Management District (the "UBSC District"), a formed and operating ground water management district with the powers enumerated in the Colorado Ground Water Management Act, C.R.S. § 37-90-101 *et seq.* The UBSC District has reviewed the Esteban Rodriguez Sketch Plan (the "Project") submitted by William Guman & Associates, Ltd. ("Applicant") for the development of up to 144 rural residential single family lots on approximately 493.21 acres and provides the following comments for your review and consideration:

1. Management and Use of Designated Groundwater.

The Colorado Ground Water Management Act of 1965, C.R.S. § 37-90-101 *et seq.*, created the Colorado Ground Water Commission ("Commission") and provided for the formation of groundwater management districts within designated basins. Together, the Commission and the local groundwater management district administer designated groundwater in a coordinated manner.

Under the 1965 Act, the Commission, not the water court, has jurisdiction to determine the right to withdraw designated groundwater. The Commission has promulgated rules and regulations, the "Designated Basin Rules," 2 CCR 410-1, for the management and control of designated groundwater and are binding on all users of designated groundwater. Groundwater management districts may also establish rules for the management and control of designated groundwater that are applicable to the withdrawal and use of designated groundwater. For example, within the boundaries of a groundwater management district, the district has the authority to administer designated groundwater priorities, issue curtailment orders, further limit withdrawals, and resolve disputes between well owners.

The UBSC District is a groundwater management district formed and operating under the Colorado Ground Water Management Act. Pursuant to its statutory authority, the UBSC

District has established rules, regulations, and policies, available to view on the UBSC District's website.¹ Applicant should review all UBSC District rules, regulations, and policies.

2. Compliance with UBSC District Rules.

The Project is located within the UBSC District's boundaries and therefore Applicant must comply with all UBSC District rules and regulations. Specifically, Applicant must comply with:

UBSC District Rule 17. Rule 17(B) imposes the following limit on withdrawals from large capacity wells in subdivisions:

Withdrawals shall not exceed 0.5 acre-feet per year per single family residence, single condominium unit, apartment unit, single unit with a multiple-dwelling unit, or equivalent within the Subdivision or cluster development supplied by the well. In the event a Subdivision or cluster development is supplied by multiple wells, production from all wells supplying the subdivision or cluster development shall not exceed the product of (the number of single family residences, single condominium units, apartment units, single units within a multiple-dwelling unit or equivalent within the Subdivision)X(.5) acre feet per year. In no event shall production from the well exceed the rate or amount set forth in any determination of water rights issued for the well by the Colorado Ground Water Commission.

UBSC District Rule 19. Rule 19 imposes the following limits on withdrawals from large capacity wells for commercial use:²

- (A) Withdrawals shall be limited to the amount reasonably necessary to supply the present and future needs of the proposed Commercial Business, as established by the Board of Directors of the UBSC District in consultation with the Ground Water Commission.
 - Applicant must therefore provide a detailed water demand estimates for the commercial use and all other intended uses so the UBSC District Board of Directors may make its determination of the amount reasonably necessary to supply the present and future needs of the business.
- (B) Totalizing flow meters shall be installed on all wells and well owners shall keep accurate records of withdrawals and provide copies of such records to the UBSC District upon request.

Applicant is responsible for complying with all UBSC District rules and regulations, not just Rules 17 and 19.

¹UBSC District, *Rules, Regulations and Statement of Policy*, https://upperblacksquirrelcreekwater.com/reg_rules.php.

² Rule 19 defines a commercial business as “a business that will a) be operated by the well owner and that will have its own books, bank accounts, checking accounts and separate tax returns; b) use water solely on the land indicated on the proposed permit for the purposes stated in the proposed permit; and c) will maintain its individual assets and will own or lease the property upon which the well is to be located.”

3. Water and Wastewater Service.

The UBSC District has enacted a policy that “encourages the uses of central (municipal) water and wastewater systems, as opposed to the use of individual wells and septic systems in any proposed subdivision consisting of three or more lots.” Similarly, the El Paso County Land Development Code states that “[e]very reasonable effort shall be made to provide a central wastewater system.” El Paso Land Dev. Code § 8.4.8(B)(1)(a).

The proliferation of individual septic systems, called Individual Sewage Disposal Systems (ISDS) or Onsite Wastewater Treatment Systems (OWTS), within the UBSC Basin degrades the Basin’s alluvial water quality and threatens the already over-appropriated groundwater resources of the Basin. Septic systems are generally ineffective at removing organic nitrogen compounds, volatile organic compounds (solvents, paints, antifreeze, etc.), pharmaceuticals, and personal care products from effluent. The cumulative use of septic systems in a specific region of the aquifer can result in the discharge of hundreds of acre-feet per year of effluent to a localized part of the alluvial aquifer, which may cause attenuation of certain contaminants from the effluent that can then become a source of residual contamination.

For projects intending to utilize individual septic systems, consideration must be given to the cumulative use of septic systems in that area and the location of the septic systems within the alluvial groundwater flow system. This should include an analysis of the depth to groundwater and depth to bedrock, and the degree of subsurface saturation, which influences groundwater flow direction and velocity. In areas with shallow depth to water, the use of septic systems can create near-surface saturated conditions. Similarly, shallow bedrock can prevent septic systems from properly discharging, which can result in near-surface impacts, particularly during rain events. *Accordingly, individual septic systems should not be used in areas with shallow depth to water or shallow bedrock.*

The application states that Applicant intends to utilize onsite wastewater treatment systems. The location of this proposed development is within a few miles of the Woodmen Hills Wastewater Treatment Plan and the subdivision *should investigate connect to Woodmen Hills Metropolitan District’s central wastewater service*. Failing to do so is a violation the UBSC District’s policy, and no evidence is provided that the Applicant took every reasonable effort to provide connection to the central wastewater.

4. Shallow Groundwater and Underdrains.

Shallow groundwater exists throughout much of the UBSC Basin, including the area underlying this proposed development. Applicant should investigate the existence of shallow groundwater under each proposed lot. Structures developed in areas with high groundwater require underdrains to capture and drain water that would otherwise flood those structures. Under the Ground Water Commission’s Designated Basin Rules, underdrains are considered large capacity wells and require a large capacity well permit. Any such large capacity well permit will require a replacement plan that meets the requirements of Designated Basin Rule 5.6, including by replacing evaporation and evapotranspiration associated with the exposure of groundwater caused by the underdrain.

5. Denver Basin Groundwater.

Denver Basin groundwater is a non-renewable source, and it is well known that the Denver Basin water supplies are diminishing and may not be available in the future. Accordingly, Applicant should seek renewable sources of water and minimize reliance on Denver Basin groundwater to supply the Project.

The UBSC District reserves the right to provide additional comments at a later date founded upon information not readily ascertainable from the above-referenced application.

Sincerely,

A handwritten signature in blue ink that reads "LOBi". The letters are stylized and cursive.

Luke O'Brien

for

TROUT RALEY