

EL PASO COUNTY



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SF-17-017 Jackson Ranch, Filing No. 3
(Final Plat)

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

1. This is a proposal by Four Gates Land Development, LLC ("Applicant") for approval of a Final Plat to subdivide approximately 26.21 acres into 9 single family residential lots with minimum lot size of 2.5 acres, public street right-of-way, and an open space and drainage parcel. The property is zoned RR-2.5 (Residential Rural).

2. The Applicant has provided for the source of water to derive from individual on-lot wells withdrawing from the not nontributary Dawson Aquifer. Applicant estimates its annual water requirements for 9 lots as follows: household use at 3.6 acre-feet, irrigation of lawn and gardens at 2.7 acre-feet, and a water feature at 0.45 acre-feet for a total of 6.75 acre-feet or 0.75 acre-feet per lot. Applicant will need to provide a supply of 2,025 acre-feet of water (6.75 acre-feet /yr. x 300 yrs.) to meet the County's 300 year water supply requirement.

3. In a letter dated June 20, 2017, the State Engineer's Office reviewed the proposed water supply for this 9-lot Final Plat. The State Engineer's Office indicates that the water supply withdrawing from the Dawson Aquifer operates pursuant to the plan for augmentation decreed in Consolidated Water Court Case Nos. 2013CW3100 (Division No. 1) and 2013CW3042 (Division No. 2). The Engineer further broke down the annual water demand as follows: 0.4 acre-feet for in-house uses, 0.3 acre-feet for irrigation of 5,000 square feet of home lawns or gardens, and 0.05 acre-feet for use in a water feature for a total of 0.75 acre-feet per lot and a total of 6.75 acre-feet for the 9-lot subdivision. The Engineer noted that the not-nontributary Dawson Aquifer water underlying the subdivision is a portion of the water adjudicated in Case Nos. 08CW317

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and 08CW318 (Division No. 1) underlying 2 different parcels, which has an allowed average annual amount of withdrawal of 77 acre-feet of which 54 acre-feet per year is included in the augmentation plan in Case Nos. 2013CW3100 and 2013CW3042. The plan for augmentation allows for diversion of 18 acre-feet annually for a maximum of 300 years. The Engineer noted that the plan for augmentation allocates this 18 acre-feet annual diversion to serve 24 residential lots through individual wells, with each well limited to an annual amount of 0.75 acre-feet. 9 of the 24 augmented wells will serve this subdivision for a total of 6.75 acre-feet. The Engineer further stated that the “augmentation plan allows for the withdrawal of the 6.75 acre-feet per year for a maximum of 300 years.”

The Engineer further noted that well permit applications submitted by an entity other than the current decree holders, Marshal G., Sara L., and Marlene J. Brown, must include evidence that the applicant has acquired the right to the portion of water being requested on the application.

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 “. . . any proposed detention pond for this project, must meet the requirements of a ‘storm water detention and infiltration facility’ as defined in section 37-92-602(8), Colorado Revised Statutes, to be exempt from 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 notification, construction and operation of the proposed structure meets statutory and administrative requirements.”

Finally, pursuant to C.R.S. § 30-28-136(1)(h)(l), the Engineer is of the opinion that the water supply is adequate and can be provided without causing injury to decreed water rights.

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

5. Plan for Augmentation. The Decree in Consolidated Water Court Case Nos. 2013CW3100 (Division No. 1) and 2013CW3042 (Division No. 2) is for both a change in water rights and the plan for augmentation. The plan for augmentation relies on water rights adjudicated in Case Nos. 08CW317 and 08CW318 (Division No. 1). The land associated with Case No. 08CW317 is 50.12 acres (Parcel 4) and land associated with Case No. 08CW318 is 44.97 acres (Parcel 5)(the “Subject Property”). The change in water rights allows the total combined decreed amounts in each aquifer decreed in Case Nos. 08CW317 and 08CW318 (Division No. 1) to be withdrawn through wells located anywhere on the 95.09 acres of the Subject Property.

The plan for augmentation in Consolidated Water Court Case Nos. 2013CW3100 (Division No. 1) and 2013CW3042 (Division No. 2) states that 18 acre-feet per year over 300 years of not nontributary Dawson Aquifer groundwater decreed in Case Nos. 08CW317 and 08CW318 (Division No. 1), is required to be augmented, and that 77 acre-feet of Dawson Aquifer water was decreed in Case Nos. 08CW317 and 08CW318 (Division No. 1), from which 54 acre-feet per year is subject to the plan for augmentation. Applicants are unable to replace depletions to the Arkansas River and Monument Creek Stream Systems; therefore; replacement of all depletions during pumping will be replaced to the South Platte River via the Cherry Creek stream system from septic return flows, which will exceed the total annual depletions to the stream system.

The Decree requires the Applicant, its successors and assigns, to reserve and dedicate to the plan for augmentation all of the Laramie Fox Hills Aquifer water (27.7 acre-feet per year and 2,770 acre-feet total) and 26.3 acre-feet per year and 2,630 acre-feet total of the Arapahoe Aquifer water decreed in Case Nos. 08CW317 and 08CW318 (Division No. 1) to replace post-pumping depletions to the Cherry Creek Stream System, and to drill a well into either or both of these aquifers to provide for said post-pumping depletions.

The Court ruled that withdrawal of up to 18 acre-feet per year and no more than 5,400 acre-feet total from the Dawson Aquifer pursuant to the provisions of the decreed plan for augmentation will not result in material injury to vested water rights.

6. Analysis. The Court decreed a total of 18 acre-feet annually for 300 years for a total of 5,400 acre-feet from the Dawson Aquifer (18 acre-feet x 300 yrs. = 5,400 acre-feet) which can be withdrawn through up to 24 individual wells. The 9 wells in this Filing 3 using 6.75 acre-feet/year is in addition to the 6 wells using 4.5 acre-feet/year approved previously for Filing 1 and the 8 wells using 6.0 acre-feet/year approved previously for Filing 2. Based on an annual demand of 6.75 acre-feet for the 9 lots in this Filing 3 and an available supply of 18 acre-feet, plus an annual demand of 4.5 acre-feet for use in Filing 1 and 6.0 acre-feet for use in Filing 2, the total demand is 17.25 acre-feet, which is less than the 18 acre-feet annual supply. Based on the foregoing, there should be sufficient supply to meet the County's 300 year water supply rule.

7. Therefore, at this time, based on the finding of no injury and sufficiency by the State Engineer, the decreed water rights in the Case Nos. 08CW317 and 08CW318 (Division No. 1) and pursuant to the plan for augmentation in the Decree in Consolidated Water Court Case Nos. 2013CW3100 (Division No. 1) and 2013CW3042 (Division No. 2), and on the requirements listed below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. The El Paso County Health Department shall make a finding as to water quality.

REQUIREMENTS:

Plat Notes and Documentation are required to address the following:

A. Applicant shall provide proof to the County Attorney's Office and the Development Services Department prior to recording the final plat that water rights have been conveyed from the current decree holders, Marshal G., Sara L., and Marlene J. Brown, to Edward A. Edwards to Four Gates Land Development, LLC.

B. Applicant, its successors and assigns, shall create an HOA and advise the HOA and all future owners of these lots of all applicable requirements of the Decree entered in Consolidated Water Court Case Nos. 2013CW3100 (Division No. 1) and 2013CW3042 (Division No. 2) as well as their obligations to comply with the Decree and plan for augmentation, including, but not limited to, costs of operating the plan for augmentation which will include the costs for construction and pumping of the Arapahoe Aquifer and/or Laramie-Fox Hills Aquifer well(s) to replace post-pumping depletions, and responsibility for metering and collecting data regarding water withdrawals from said well(s).

C. Applicant shall assign or convey to the HOA, Applicant's interests, rights, and obligations in the plan for augmentation, and create restrictive covenants upon and running with the property which shall obligate individual lot owners and the HOA to carry out the requirements of the plan for augmentation. Such assignment or conveyance shall be accomplished by an appropriate agreement and assignment or conveyance instrument that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

D. Applicant shall reserve in any deeds of the property all of the Laramie Fox Hills Aquifer water (27.7 acre-feet per year and 2,770 acre-feet total) and 26.3 acre-feet per year and 2,630 acre-feet total of the Arapahoe Aquifer water decreed in Case Nos. 08CW317 and 08CW318 (Division No. 1) for use in the augmentation plan. Applicant shall convey by recorded warranty deed these reserved Laramie-Fox Hills and Arapahoe Aquifer water rights to the HOA for use in the augmentation plan. Said deed shall provide that the water rights shall be appurtenant to the subdivision, to be used for the benefit of all of the lot owners to provide a source of augmentation water to replace post-pumping stream depletions caused by pumping wells in the not nontributary Dawson Aquifer underlying the subdivision, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered or encumbered. Applicant shall provide copies of such reservation and conveyance instruments that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

E. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owners sufficient water rights in the Dawson Aquifer underlying each lot to satisfy El Paso County's 300 year water supply requirement: (Dawson) 225 acre-feet (0.75 ac. ft./lot x 300 yrs.). Said Deed shall provide that the water right shall be appurtenant to the land, to be used for the benefit of the lot owner, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. It is anticipated that these conveyances will satisfy the State Engineer's evidentiary requirement that an applicant for an individual on-lot well has acquired the right to the portion of water being requested on the application. Applicant shall provide a form deed for such conveyance that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

F. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA to the Development Services Department and the County Attorney's Office for review, and the same shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat. Said Declaration shall cross-reference the decreed plan for augmentation, the related water rights decrees, and shall recite the obligations of the individual lot owners and the HOA under each of these documents. Applicant shall provide a copy of the Certificate of Incorporation of the HOA by the Secretary of State to the Planning and Community Development Department and the County Attorney's Office prior to recording of the final plat.

G. Applicant, its successors and assigns, shall record all applicable documents including, but not limited to, the Decrees in Case Nos. 08CW317 and 08CW318 (Division No. 1) and the plan for augmentation decreed in the Decree in Consolidated Water Court Case Nos. 2013CW3100 (Division No. 1) and 2013CW3042 (Division No. 2), agreements, assignments, and warranty deeds regarding the water rights, Declaration of Covenants, By-laws, and Articles of Incorporation in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

H. 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, which is based on an allocation approach. Applicants, the Home Owners Association, 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 indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers, and Applicants, their successors and assigns, including individual lot

owners in the subdivision and the HOA may be required to acquire, develop, and incorporate alternative renewable water resources in a permanent water supply plan that provides future generations with a water supply.”

cc: Kari Parson, Project Manager, Planner II