

EL PASO COUNTY



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MS-19-1 Timber Ridge West Minor Subdivision

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FINDINGS AND CONCLUSIONS:

1. This is a proposal by Jacob Decoto ("Applicant") for a 3 lot minor subdivision on a parcel of approximately 36 acres (the "Property"). The Applicant desires to subdivide the property into 3 lots: Lots 1 and 2 each will be approximately 3.5 acres in size, and the 3rd lot, Tract A, will be approximating 29 acres. The property is currently zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells, as provided through the plan for augmentation in District Court Water Division 2 Case No. 2018CW3005 ("Augmentation Decree"), and from water rights adjudicated for the Property in District Court Water Division 2 Case No. 2017CW3002 ("Adjudication Decree"). An exempt well permit (Well Permit No. 304551) has been issued for the Property, but it is unclear whether a well has been drilled. The Adjudication Decree notes that 3.0 acre-feet annually was reserved from quantification of the Dawson aquifer for permitting associated with this exempt well permit. Pursuant to the Water Supply Information Summary ("WSIS"), the source of the water supply will derive from the Dawson aquifer, operating pursuant to the augmentation plan defined in the Augmentation Decree. The WSIS states the demand is 0.6 acre-feet for household use and up to 0.62 acre-feet for any combination of uses, which may include stock watering, irrigation, and other uses, for a total of 1.22 acre-feet annually for all 3 lots.

NOTE: These figures are different from those in the Augmentation Decree. That Decree states the demand/allowed uses as follows: Decoto Wells 2 & 3 (for Lots 1 & 2) each may pump up to 0.32 acre-feet annually, and Decoto Well No. 1 (for Tract A) may pump up to 0.58 acre-feet annually, for a maximum total of 1.22 acre-feet for all 3 lots. Further, the Augmentation Decree states that up to 0.26 acre-feet annually per lot may be used for household use, with the additional available pumping (0.44 acre-feet annually per lot) for

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landscape irrigation, watering of horses and livestock, and other decreed beneficial uses. For purposes of this Water Review, the County Attorney's Office will rely on the figures from the Augmentation Decree not Applicant's WSIS. Based on those figures, the annual water demand to serve the Property at 0.32 acre-feet/year for each of Lots 1 and 2, and 0.58 acre-feet/year for Tract A, is 1.22 acre-feet for all 3 lots. Based on this total demand of 1.22 acre-feet per year for the minor subdivision, Applicant must be able to provide a supply of 366 acre-feet of water (1.22 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

3. In a letter dated January 28, 2019, and as amended on March 11, 2019, the State Engineer reviewed the submittal to plat the approximately 36 +/- acre parcel into a 3 lot minor subdivision. The State Engineer reviewed the WSIS, both Decrees, and the Water Resources and Water Quality Report for Timber Ridge West Subdivision dated December 3, 2018. The Engineer stated that the "water is to be provided by on-lot wells producing from the Dawson aquifer that will operate pursuant to the augmentation plan decreed by the Division 2 Water Court in case no. 2018CW3005. The water in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the 36.01 acres of land which makes up the entire proposed Timber Ridge West Subdivision was adjudicated by the Division 2 Water Court in case no. 2017CW3002." As updated in the State Engineer's letter dated March 11, 2019, the following amounts of water were determined to be available underlying the 36 acre Property:

| Aquifer | Volume (AF) | Annual Allocation 300 Year (AF/Year) |
|------------------------|-------------|--------------------------------------|
| Dawson (NNT) | 1,944.4 | 5.48 |
| Denver (NNT) | 1,897.7 | 6.33 |
| Arapahoe (NT) | 1,561.0 | 5.20 |
| Laramie-Fox Hills (NT) | 1,026.2 | 3.42 |

The State Engineer notes that the Augmentation Decree "allows for diversion of 1.22 acre-feet annually from [the] Dawson aquifer for a maximum of 300 years." The State Engineer further states that "pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(2) and the plan for augmentation noted herein, for all wells in the subdivision and operates the wells in accordance with the terms and conditions of any future well permits."

4. Adjudication Decree and Plan for Augmentation (Augmentation Decree). The Adjudication Decree quantifies all of the water rights for the groundwater underlying 4 different parcels: Arroya Parcel, West Parcel No. 1, West Parcel No. 2, and West Parcel No. 3. Jacob Decoto owns both West Parcels Nos. 1 and 2; however, the applicable parcel for this subdivision is West Parcel No. 1. The Augmentation Decree permits the Applicant to subdivide the parcel into the 3 lots identified for this subdivision and to construct 3 wells into the not-nontributary Dawson aquifer. As indicated in Paragraph 2

above, Decoto Wells 2 & 3 (for Lots 1 & 2) each may pump up to 0.32 acre-feet annually, and Decoto Well No. 1 (for Tract A) may pump up to 0.58 acre-feet annually, for a maximum total of 1.22 acre-feet for all 3 lots. The allowed uses are domestic in-house use, commercial, landscape irrigation, watering of horses or livestock, or use in water features or hot tubs or other beneficial uses, including recreation, wildlife, wetlands, fire protection, piscatorial, storage, and augmentation.

Replacement of depletions during pumping. For any wells constructed into the non-tributary Dawson aquifer, the Applicant is required to replace actual stream depletions on an annual basis during the 300 years of pumping by return flows from non-evaporative septic systems. The Augmentation Decree indicates the annual consumptive use for non-evaporative septic systems is 10% per year per residence; therefore, based on the Decree's analysis using a more conservative figure of an annual household use rate of 0.2 acre-feet per lot (rather than the 0.26 acre-feet allowed), a total of 0.54 acre-feet (10% of 0.2 acre-feet/lot or 0.18 acre-feet/lot) is replaced to the stream system annually using non-evaporative septic systems. The Decree states, "[w]ith maximum depletions from the pumping of 3 wells at 0.18 acre feet, and anticipated replacement of 0.54 acre feet annually, during pumping, stream depletions will be adequately augmented." Therefore, Applicants, their successors and assigns, must use nonevaporative septic tanks and leach fields for each single-family dwelling.

Replacement of post-pumping depletions. The plan for augmentation will have a pumping period of a minimum of 300 years. The Augmentation Decree requires the Applicant to replace any injurious post-pumping depletions by reserving up to 366 acre-feet of water from the nontributary Laramie-Fox Hills aquifer, and construct a well or wells into this aquifer to replace post-pumping depletions. The reserved nontributary Laramie-Fox Hills groundwater will be used to replace any injurious post-pumping depletions, and the Decree requires that these waters may not be severed from ownership of the overlying property. The Water Court stated that operation of the plan for augmentation "will not result in material injury to the vested water rights of others."

5. Analysis. Applicant's total water demand for the Timber Ridge West Subdivision is 1.22 acre-feet/year. Pursuant to the Augmentation Decree, the Decoto Wells Nos. 2 and 3 each may pump up to 0.32 acre-feet of water per year, and the Decoto Well No. 1 may pump up to 0.58 acre-feet of water per year, for a total of 1.22 acre-feet of water per year. The Adjudication Decree determined that there is an available water supply from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers, and specifically, 5.48 acre-feet is available annually for 300 years from the Dawson aquifer. The Augmentation Decree permits withdrawal of 1.22 acre-feet/year from the Dawson aquifer for 300 years (for a 300 year supply of 366 acre-feet), which is adequate to meet the demand of the subdivision. Based on the permitted withdrawal of 1.22 acre-feet annually for 300 years, availability of 5.48 acre-feet annually from the Dawson aquifer adjudicated for the Property, and an annual water demand of 1.22 acre-feet/year, there

appears to be a sufficient water supply to meet the demands of the Timber West Minor Subdivision utilizing the Dawson aquifer water supply.

6. Section 8.4.7(B)10(g) of the El Paso County Land Development Code allows for the presumption of acceptable water quality for minor subdivision projects such as the Timber West Minor Subdivision.

7. Therefore, based on the finding of sufficiency and no injury by the State Engineer pursuant to their review of District Court Water Division 2 Case No. 2018CW3005 and District Court Water Division 2 Case No. 2017CW3002, and pursuant to the requirements below, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of quantity and dependability. There is a presumption of sufficient water quality.

REQUIREMENTS:

A. Applicant shall take all necessary steps to ensure that if and when Applicant conveys the Property for this subdivision, that the appropriate water rights and obligations of the Decree are also conveyed to the appropriate successor purchaser(s). These Requirements shall apply to the Applicant and its successors and assigns.

B. Applicant, its successors and assigns, shall comply with all requirements of Well Permit No. 304551 as may be required pursuant to the Augmentation Decree. Prior to hearing by the Board of County Commissioners, Applicant shall clarify for the Planning and Community Development Department and the County Attorney's Office whether a well has been drilled pursuant to this Permit, and what requirements, if any, there are regarding replacing either this Permit or the well pursuant to the Augmentation Decree and/or C.R.S. § 37-90-137(4).

C. Prior to hearing by the Board of County Commissioners, Applicant shall provide an updated WSIS that conforms with the withdrawal amounts authorized in the Augmentation Decree.

D. The County prefers that when there is a plan for augmentation requiring replacement of post-pumping depletions, that Applicant, its successors and assigns, create a homeowners' association ("HOA"); however, alternatively to establishing an HOA, Applicant, its successors and assigns, shall create restrictive covenants or deed restrictions upon and running with the Property which shall advise and obligate future lot owners of this subdivision, their successors and assigns, regarding all applicable requirements of the Augmentation Decree, District Court Water Division 2 Case No. 2018CW3005, and the Adjudication Decree, District Court Water Division 2 Case No. 2017CW3002, and their obligations to comply with the same, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to

the stream system, and that such return flows shall only be used to replace depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose. Applicant shall assign or convey to the HOA or to individual lot owners, all of Applicant's interests, rights, and obligations in the Augmentation Decree, including the replacement requirement, and shall create restrictive covenants or deed restrictions upon and running with the Property which shall advise and obligate future lot owner(s) of this subdivision, their successors and assigns, regarding all applicable requirements of the Augmentation Decree as well as their obligations to comply with the replacement requirements. Said Covenants or deed restrictions shall also ensure that return flows by the use of non-evaporative septic systems are made to the stream systems, and that such return flows shall only be used to replace depletions and shall not be sold, traded, or assigned in whole or in part for any other purpose. In addition, the Covenants or deed restrictions shall advise future lot owners of this subdivision, their successors and assigns, of their obligations regarding costs of operating the plan for augmentation, which may include construction and pumping of a Laramie-Fox Hills aquifer well or wells to replace post-pumping depletions. Such Covenants or deed restrictions shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the Decrees.

E. Applicant, its successors and assigns, shall reserve in the Covenants or the deed restrictions and in any deeds of the Property, at least 366 acre-feet of Laramie-Fox Hills aquifer water decreed for use in the plan for augmentation to replace post-pumping depletions. If a HOA is not created, Applicant, its successors and assigns, shall convey by warranty deed, at the time of lot sales to successor owners, sufficient water rights in the Laramie-Fox Hills aquifer underlying the Property, pursuant to the Augmentation Decree, to meet the post-pumping replacement obligations. Those Laramie-Fox Hills aquifer amounts, based on the respective demand for each lot, would be as follows: Lot 1 is 96 acre-feet, Lot 2 is 96 acre-feet, and Tract A is 174 acre-feet for a total of 366 acre-feet for all 3 lots. Said reservation and deeds shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for replacement supply. Applicant shall provide copies of said Covenants or deed restrictions or other 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 the final minor subdivision plat.

F. Applicant, its successors and assigns, shall reserve in the Covenants or the deed restrictions 366 acre-feet of not-nontributary Dawson aquifer water for the primary water supply. Applicant, its successors and assigns, shall convey by warranty deed, at the time of lot sales to successor owners, sufficient water rights in the Dawson aquifer underlying the Property, pursuant to the Decrees, to satisfy El Paso County's 300 year water supply requirement. The Dawson aquifer supply requirement for each of the lots is as follows: Lot 1 is 96 acre-feet (0.32 ac.ft./yr. x 300 yrs.), Lot 2 96 acre-feet (0.32 ac.ft./yr. x 300 yrs.), and Tract A is 174 acre-feet (0.58 ac.ft./yr. x 300 yrs.), for a total of 366 acre-feet for 300 years. Said Covenants or deed restrictions and/or

conveyance instrument shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for the primary supply for the lot. Applicant shall provide said Covenants or deed restrictions or other such reservation and/or 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 minor subdivision plat.

G. Applicant shall submit the Declaration of Covenants, Conditions, and Restrictions or deed restrictions and any plat notes required herein to the Planning and Community Development Department and the County Attorney's Office for review, and the same must be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the final minor subdivision plat. Said Declaration/deed restrictions shall cross-reference the Decrees and shall recite the obligations of the individual lot owners under each of these documents.

H. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the Augmentation Decree (District Court Water Division 2 Case No. 2018CW3005) and the Adjudication Decree (District Court Water Division 2 Case No. 2017CW3002), agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants (if applicable) in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

I. 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. 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 used for allocation indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply."

cc: Kari Parsons, Project Manager, Planner II