

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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November 5, 2020

PUDSP-19-2 Sanctuary of Peace Residential Community at Benet Hill
PUD/Preliminary Plan

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

1. This is a proposal by the Benet Hill Monastery of Colorado Springs ("Applicant"), for a PUD/Preliminary Plan to subdivide approximately 49.58 +/- acres of land (the "Property") into 27 lots, to include 26 single-family attached dwelling units (duplex units) in 13 separate residential structures (14 one-bedroom units and 12 two-bedroom units), plus an additional lot for a community clubhouse or building (which will include 4 bedrooms for guest use), plus 4 tracts that will encompass roadways, parking, mailboxes, open space, a central water system, and detention facilities. The Property is currently zoned A-5 (Agricultural) and RR-5 (Rural Residential) and there is a concurrent rezoning request pending to rezone the property to PUD (Planned Unit Development).

2. The water needs for the subdivision will be met through a new community water system that will be a public water system, which will be operated by the Sanctuary of Peace Property Owners Association (the "Association" or "HOA") as described in the Declarations of Protective and Restrictive Covenants, Sanctuary of Peace Residential Community. The Covenants state that the Declarant, the Sisters of Benet Hill Monastery, through Benet Hill Monastery of Colorado Springs, Inc., will transfer and assign to the Association all right, title and interest in the Augmentation Plan and water rights thereunder. . . .Declarant will further assign to the Association all obligations and responsibilities for compliance with the Augmentation Plan. . . ." The water supply for the Community Water System will derive from the not-nontributary Dawson aquifer, pursuant to District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1)("Decree and Augmentation Plan"). Pursuant to the Water Supply Information Summary ("WSIS"), the Applicant estimates its annual water requirements to serve the development at 8.37 acre-feet/year, to include the following:

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

	Acre-Feet/Year
26 lots	5.3 A/F
Irrigation	1.3 A/F
Common Garden	1.64 A/F
Community Building (1 lot)	0.13 A/F
Total	8.37 A/F

The Applicant will need to provide a supply of 2,511 acre-feet of water (8.37 acre-feet/year x 300 years) to meet El Paso County's 300-year water supply requirement.

3. The Applicant provided a Water Resources Report ("Report") detailing the water supply for Sanctuary of Peace Filing No. 1 dated August 20, 2020, which highlights the provisions of the Decree and Augmentation Plan. The Decree and Augmentation Plan permits withdrawals in the amount of 8.37 acre-feet/year (2,511 acre-feet total for 300 years) for the 26 lots, the community building (Lot 27), irrigation, and gardens. The Decree also requires the Applicant to reserve 1,414 acre-feet of nontributary Laramie-Fox Hills aquifer water and 1,087 acre-feet of Arapahoe aquifer water for replacement of post-pumping depletions. The Report further notes that the "remaining 282 acre-feet of Laramie-Fox Hills aquifer water rights will also be reserved, to serve as a source of water for Applicants' wells for 50 years after the expiration of the augmentation plan." The Report states that a well was constructed on the property on March 20, 2020, pursuant to Well Permit No. 83885-F, issued on December 11, 2020, and the well is identified as "Benet Well No. 1."

4. The Applicant's Letter of Intent confirms that since the water for the subdivision will be provided by a new community water system that will be a public water system, Applicant submitted plans to the Colorado Department of Public Health and Environment ("CDPHE") for review and approval. The Applicant submitted its Capacity Assessment Worksheet and Supplemental Information for the Technical, Managerial, and Financial (TMF) Capacity, and the Final Plans and Specification for the Sanctuary of Peace POA. CDPHE reviewed the Capacity Assessment Worksheet and TMF Capacity and provided their "Acknowledgement of Drinking Water Final Plans and Specifications for Construction of Sanctuary of Peace POA Water System, Sanctuary of Peace POA, Public Water System Identification (PWSID) No. C00121702, El Paso County," dated July 20, 2020.

5. In a letter dated March 22, 2019, the State Engineer's Office reviewed the submittal to subdivide the 49.58 +/- acres of land into 27 lots. The State Engineer detailed the water demand for the subdivision at 8.37 acre-feet/year to include 26 lots, a community building, irrigation, and a community garden. The State Engineer stated that "the source of water is to be provided by one community well producing from the Dawson aquifer that will operate pursuant to the augmentation plan decreed by the Division 2 Water Court in case no. 2018CW3019. The case adjudicated water in the Dawson,

Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the 50.36 +/- acres of land which makes up the entire proposed Benet Hill Monastery Subdivision.” The State Engineer stated that, pursuant to the Decree and Augmentation Plan, the following amounts of water were available underlying the property:

Aquifer	Tributary Status	Volume (A/F)	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	NNT	3680	36.8	12.26
Denver	NNT	4670	46.7	*
Arapahoe	NT	1930	19.3	*
Laramie-Fox Hills	NT	1440	14.4	*

**Value omitted from the table in decree 18CW3019*

The State Engineer noted that the Decree and Augmentation Plan permits diversion of 8.37 acre-feet annually from the Dawson aquifer for a maximum of 300 years. The State Engineer also stated that “[a]t the time that applicant decides to drill the communal well the applicant will be required to apply for, and obtain a new well permit issued pursuant to Section 37-90-137(4) C.R.S. and the plan for augmentation.”

Finally, the State Engineer stated that it is their opinion, “pursuant to CRS 30-28-136(1)(h)(l), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as 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.”

6. Decree and Augmentation Plan, Division 2, Case No. 18CW3019. The Decree is in the name of the Sisters of the Benet Hill Monastery, adjudicates water rights in the four aquifers underlying the Property, and approves the plan for augmentation to allow withdrawal of the not nontributary Dawson aquifer water for this subdivision using septic return flows from the equivalent of 26 septic systems, to replace depletions to the Arkansas River stream system during 300 years of pumping the Dawson aquifer. Nontributary Arapahoe aquifer and Laramie-Fox Hills aquifer water will be used to replace post-pumping depletions.

The Decree provides for maximum withdrawal of 8.37 acre-feet of water annually for the subdivision to be withdrawn from one central/communal well, Benet Well No. 1, for a minimum of 300 years. The Decree allows 0.20 acre-feet annually for up to 26 residential dwellings, an average of 0.10 acre-feet annually for household use in the community building, 0.05 acre-feet annually per 1,000 square feet (2.18 acre-feet per acre) for landscape irrigation, an average of 0.13 acre-feet annually for varying inside uses of water within the community building, and 2.18 acre-feet annually per irrigated acre for common garden use. Allowed uses include domestic, commercial, irrigation,

stock water, recreation, wildlife, wetlands, fire protection, piscatorial, and storage and augmentation associated with the augmentation plan.

The Decree states the "Applicant has agreed to maintain a total amount of 60,000 gallons (0.18 acre-feet) of water in storage for emergency firefighting uses," which may be replaced or used annually.

Replacement of Depletions During Pumping. The plan for augmentation provides for a pumping period of a minimum of 300 years. For the well 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 residential return flows from non-evaporative septic systems. While depletions will occur to both the South Platte River and Arkansas River systems, the plan requires Applicant to replace depletions only to the Arkansas River system where the majority of depletions will occur. The Decree and Augmentation Plan indicates the consumptive use for non-evaporative septic systems is 10% per year; therefore, at an annual household use rate of 0.20 acre-feet per residence and 0.10 acre-feet for the community building indoor use, 5.3 acre-feet will be pumped annually, with 4.77 acre-feet (5.3 ac.ft. - 10% (0.53 ac.ft.) = 4.77 ac.ft.) replaced to the stream system per year. "Thus, during pumping, the estimated maximum stream depletions of 1.93 annual acre-feet will be more than adequately augmented."

Replacement of Post-Pumping Depletions. The Decree requires the Applicant to replace any injurious post-pumping depletions by reserving 1,414 acre-feet of water from the nontributary Laramie-Fox Hills aquifer and 1,097 acre-feet of water from the nontributary Arapahoe aquifer, "representing maximum pumping of 2,511 acre-feet less stream depletions replaced during the plan pumping period, or such greater amounts from the nontributary Laramie-Fox Hills aquifer and/or Arapahoe aquifer as necessary to replace any injurious post pumping depletions." Applicant must construct wells into the Laramie-Fox Hills and/or Arapahoe aquifers to replace post-pumping depletions. The Decree states it constitutes a covenant running with the Property and requires that these waters may not be severed from ownership of the overlying Property.

7. Analysis—Quantity: Applicant's water demand for the Sanctuary of Peace Subdivision is 8.37 acre-feet total annually using Dawson aquifer water allowed under the plan for augmentation for a total demand of 2,500 acre-feet for the subdivision for 300 years. The Decree and Augmentation Plan authorizes withdrawal of 8.37 acre-feet of Dawson aquifer water annually for a period of a minimum of 300 years from an available supply of 3,680 acre-feet total or 12.26 acre-feet per year for 300 years. Therefore, there appears to be a sufficient water supply to meet the water demands of this subdivision.

8. Analysis—Dependability: For new central water systems like the one Applicant proposes for this subdivision, the County Attorney's Office has historically relied on CDPHE's review and approval of TMF capacity and final construction plans for the water system in order to make its dependability findings. CDPHE has changed their

interpretation of regulations and policies and timing of their TMF review, and as a result, the County Attorney's Office is no longer able to rely on CDPHE's review for dependability findings, and has had to modify its approach to dependability findings. See **Exhibit A, CDPHE Regulations, LDC, & Water Dependability**, attached hereto and incorporated herein by this reference, for additional background and information.

The County Attorney's Office has created Special Conditions to enable a finding of conditional sufficiency as to dependability for new central water systems pursuant to § 8.4.7.B.6.g.vi., LDC (see, **Exhibit B, Special Conditions For Conditional Finding Of Sufficient Dependability**, attached hereto and incorporated herein by this reference). Applicant shall comply with the Special Conditions, and upon completion to the County's satisfaction, the conditional finding of sufficiency as to dependability shall convert to a full sufficiency finding without further action required by the County.

The following information relates to dependability as set forth in § 8.4.7.B.5. & 6.g., and the Special Conditions:

a. Regarding the water supply, Applicant has provided a reliable source of water to serve the subdivision that meets the County's 300 year water supply requirement in terms of quantity, and which the State Engineer's Office finds sufficient (see, Paragraphs 3, 5, 6, and 7 above).

b. Regarding financial capacity to fund construction of the new central water system, in its TMF documents provided to CDPHE, Applicant states that capital is funded entirely from Benet Hill Monastery Cash Reserves with a net worth of \$11,795,176.00, and estimated capital costs of the water system infrastructure will be \$235,785.00.

c. Regarding water for fire demand, the Decree and Augmentation Plan address water for fire fighting: "Applicant has agreed to maintain a total amount of 60,000 gallons (0.18 acre feet) of water in storage for emergency firefighting uses." (Decree, p. 6, para. A.v.).

d. Regarding compliance with drinking water regulations, CDPHE issued an "Acknowledgement Letter" dated July 20, 2020 (attached hereto at **Exhibit C** and incorporated herein by this reference), in which CDPHE found the TMF and design to be "in conformance with the current requirements of the New Public Water System Capacity Planning Manual and the State of Colorado Design Criteria for Potable Water Systems (Design Criteria)." This is simply an acknowledgement of receipt and preliminary review and does not constitute final approval by CDPHE: "[a]t this time, Sanctuary of Peace POA does not meet the definition of a public water system . . . and therefore, the Department does not have the authority by Regulation 11 to approve or deny the capacity assessment of the plans and specifications for construction of the water system."

e. Regarding well construction, Applicant's consultant, MVE, Inc., in the Letter of Intent for Applicant dated July 22, 2020, stated that the community Benet Well No. 1 for the water system was constructed on March 23, 2020, in accordance with Well Permit No. 83855-F, which had been issued on December 11, 2019.

f. Regarding water quality, in the Letter of Intent, Applicant's consultant states that water samples were drawn on March 23, 2020 and April 1, 2020, the samples were tested, and satisfactory water quality results were received and were found to meet the requirements of the El Paso County Land Development Code. El Paso County Public Health submitted comments to EDARP stating "[t]here is a finding of sufficiency in terms of water quality for drinking water for this proposed development currently. Sample results from the CDPHE Laboratory, Colorado Analytical Laboratories, Inc., and Hazen Research, Inc. were all acceptable."

g. Regarding an operator for the central water system, in its TMF submittal to CDPHE, Applicant's consultant asserts "[t]he owner insures that an Operator in Responsible Charge assigned to operate the system and is ultimately responsible to insure record keeping requirements are met. The system is operated by David Stanford, H2O Water Consultants (Operator in Responsible Charge)."

9. Based on the information provided in the WSIS, the Water Resources Report, the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1), which permits withdrawal from the Dawson aquifer in the amount of 8.37 acre-feet/year for a period of 300 years; the State Engineer's finding of sufficiency and no injury to vested water rights; if CDPHE gives final approval of the community water system; and pursuant to the Requirements and Special Conditions herein, the County Attorney's Office recommends a finding that the proposed water supply is **sufficient** in terms of **quantity**.

10. Regarding dependability, because applicant has not yet completed construction of the new central water system, and because CDPHE has not yet issued its final approval of TMF Capacity and final construction plans, and will not even begin such final review until there are 15 hookups to the central water system, at this time, based on the information in Paragraph 8 above, and if Applicant meets the Special Conditions set forth in Exhibit B, the County Attorney's Office can only recommend a finding that the proposed water supply is **conditionally sufficiency** as to water **dependability**. Once applicant provides evidence satisfactory to the Planning and Community Development Department and the County Attorney's Office that Applicant has completed all Requirements set forth herein, plus the Special Conditions set forth in Exhibit B, the finding of conditional sufficiency as to dependability will convert to a full sufficiency finding as to dependability without further action required by the County.

REQUIREMENTS:

A. Applicant shall prepare plat notes and the Restrictive Covenant as required in the Special Conditions to restrict issuance of Building Permits and Certificates of Occupancy, and shall provide copies of such plat notes and Restrictive Covenant that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the first final plat.

B. Applicant and all future owners of lots within this subdivision shall be advised of, and comply with, any conditions, rules, regulations, limitations, and specifications set by the HOA and their Declarations of Protective and Restrictive Covenants pertaining to the Community Water Supply, including all provisions related to the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1).

C. Applicant, its successors and assigns, including all lot owners and the HOA, shall comply with all requirements of the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1) specifically, that water use for the subdivision shall not exceed 8.37 acre-feet annually, and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years, pursuant to the Court's augmentation plan.

D. Applicant shall create an HOA, and shall create restrictive covenants upon and running with the property which shall advise and obligate the HOA and future lot owners of this subdivision, their successors and assigns, regarding all applicable requirements of the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1), as well as their obligations to comply with the plan for augmentation, including, but not limited to, ensuring that return flows by the use of non-evaporative septic systems are made to the stream systems, that such return flows shall only be used to replace depletions, and shall not be separately sold, traded, or assigned in whole or in part for any other purpose. The Covenants shall advise the HOA and future lot owners of this subdivision, their successors and assigns, of their obligations regarding costs of operating the plan for augmentation, which will include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling nontributary Arapahoe aquifer and/or Laramie-Fox Hills aquifer well(s) in the future to replace post-pumping depletions. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from the well(s) pursuant to the plan for augmentation, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

E. The covenants shall address the following:

1) Identify and convey the water rights associated with the property. The Covenants shall reserve at least 2,511 acre-feet total of not nontributary Dawson aquifer water from the community Benet Well No. 1 to serve the subdivision pursuant to the Decree and Augmentation Plan to satisfy El Paso County's 300 year water supply requirement for the subdivision. Applicant shall convey by recorded warranty deed these reserved Dawson aquifer water rights to the HOA as the source of the community water supply for the subdivision. Said deed shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for primary and replacement supply. Applicant shall provide copies of said Covenants 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 first final plat.

2) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner and the community club house to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace depletions during pumping, and shall state that said return flows shall not be separately sold, traded or used for any other purpose. The Covenants shall also include the following or similar language to ensure that such return flows shall only be used for replacement purposes: "Return flows shall only be used for replacement purposes, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose."

3) The Covenants shall advise the HOA and future lot owners of this subdivision, their successors and assigns, of their responsibility for any metering and data collecting that may be required regarding water withdrawals from the community Benet Well No. 1 and future wells which may be constructed in the Dawson, Arapahoe, and/or Laramie-Fox Hills aquifers.

4) The Covenants shall address amendments using the following or similar language:

"Notwithstanding any provisions herein to the contrary, no changes, amendments, alterations, or deletions to these Covenants may be made which would alter, impair, or in any manner compromise the water supply for the Sanctuary of Peace Subdivision pursuant to the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1). Further, written approval of the proposed amendments must first be obtained from the El Paso County Planning and Community Development Department, and as may be appropriate, by the Board of County

Commissioners, after review by the County Attorney's Office. Any amendments must be pursuant to an Order from the Division 2 Water Court approving such amendment, with prior notice to the El Paso County Planning and Community Development Department for an opportunity for the County to participate in any such adjudication."

5) The Covenants shall address termination using the following or similar language:

"These Covenants shall not terminate unless the requirements of the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1) are also terminated by order of the Division 2 Water Court, and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County."

F. Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson aquifer): "These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for the Sanctuary of Peace Subdivision. The water rights so conveyed, and the return flows therefrom, shall be appurtenant to the Property, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, sold, traded, bartered, assigned or encumbered in whole or in part for any other purpose. Such conveyance shall be by special warranty deed, but there shall be no warranty as to the quantity or quality of water conveyed, only as to the title."

G. Applicant shall reserve in the Covenants and shall convey to the HOA by warranty deed at least 1,097 acre-feet of nontributary water in the Arapahoe aquifer and all of the 1,414 acre-feet of nontributary water in the Laramie-Fox Hills aquifer for use in the augmentation plan to replace post-pumping depletions. Pursuant to the Decree and Augmentation Plan, Applicant shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply. Applicant shall convey by recorded warranty deed these reserved Arapahoe aquifer and Laramie-Fox Hills aquifer water rights to the HOA for use in the augmentation plan. 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 the first final plat.

H. Applicant, its successors and assigns, shall submit Declaration of Covenants, Conditions, and 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 shall be approved by the Planning and Community Development Department and the County Attorney's Office prior to recording the first final plat. Said Declaration shall cross-reference the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1) and shall identify the obligations of the HOA and individual lot owners thereunder. **Applicant has provided a copy of its draft proposed Covenants, which are under review.**

I. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the Decree and Augmentation Plan in District Court Water Division 2 Consolidated Case No. 18CW3019 (c/r 18CW3040, Div.1) and agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado

J. 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 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 III

EXHIBIT A

CDPHE REGULATIONS, LDC, & WATER DEPENDABILITY

HISTORY

Historically, for new community water systems that will operate as a public water system, the County relied on the Colorado Department of Public Health & Environment's ("CDPHE") review and approval of TMF capacity and final construction plans, which CDPHE would do prior to construction of the new central water system, as evidence that an applicant's water supply would meet sufficiency requirements for dependability required by the Land Development Code ("LDC"). That review and approval would culminate in CDPHE's issuance of a Public Water System Identification ("PWSID") Number, which the County relied on as proof of CDPHE's approval. That approval was required before recording the Final Plat. Applicant could then choose to either provide collateral to guarantee construction of the new water system or agree to restrict sale of lots until the PWSID Number issued and a professional engineer certified that the water system had been completed pursuant to the approved construction plans and was operational. Upon such certification, the County would authorize issuance of building permits.

CDPHE has changed its interpretation of its Regulations and the timing of its review of TMF capacity and final construction plans, as explained in detail below. Briefly, CDPHE now will not provide final review until the water system is constructed and there are at least 15 hookups or regularly serves at least 25 year-round residents, which then means the system meets the definition of a public water system that CDPHE asserts it then has jurisdiction to regulate. The PWSID Number it now issues is simply an identification number for record keeping purposes and no longer has any significance for the County as it did before. Also, recent revisions to the LDC eliminated the ability to restrict sale of lots as a means to condition approval of Final Plats.

CDPHE REGULATIONS

As a result of the above, the County has had to develop a new process for evaluating and reaching a sufficiency finding for water dependability for new central water systems given CDPHE's current interpretation and application of Regulation 11, 5 CCR 1002-11. Based on the language in § 11.4(1)(a) & (b), for a new community water system that is a public water system, the supplier cannot begin construction of the new system until CDPHE approves TMF Assessment:

"(a) For new community or non-transient, non-community water systems, the supplier must not begin construction of the new water system until the supplier completes and receives Department approval of a capacity (technical, managerial and financial) assessment using the criteria found in the *New Public Water System Capacity Planning Manual*."

"(b) For all public water systems, the supplier must not begin construction of any new waterworks, make improvements to or modify existing waterworks, or begin using a new source until the supplier submits and receives Department approval of plans and specifications for such construction, improvements, modifications, or use."

The definitions of "community water system" and "public water system" are essentially the same, but "public water system" is more detailed:

“Public water system’ means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water system. . . .”

CDPHE *New Public Water System Capacity Planning Manual* (“Manual”) indicates that TMF must be approved before construction of the water system:

§ 3.1.1 “A new prospective water system may be constructed that will meet the definition of a public water system on the first day of operations. . . .For this scenario, the system can begin operations after:

- the water system has demonstrated TMF capacity,
- the Department has issued design approval in accordance with the State of Colorado Design Criteria for Potable Water Systems,
- and the project engineer certified the system has been constructed according to the design approval and final plans and specifications.

Prior to beginning construction of a new community or NTNC, all requirements of the capacity review must be in place.”

It is difficult to understand how these requirements work in the real world given CDPHE’s current interpretation and application of them. CDPHE has advised County staff that they will not do TMF capacity review and final approval and construction plans approval until the water system meets the definition of a public water system—hookups operational to serve 15 lots; however, the developer cannot get 15 hookups unless the system is constructed. But Regulation 11 says the water system cannot be constructed until TMF and construction design have been approved by CDPHE. As a result, the County is forced to operate in this gray area with CDPHE in which CDPHE advises they will issue an “acknowledgement letter” that says they have received TMF capacity information and construction plans from the developer, but they will not do complete review and final approval until there are 15 hookups. CDPHE suggests that the County withhold certificates of occupancy until the water system has been approved by CDPHE.

The Manual recognizes the above conundrum:

3.7 When Should a TMF capacity assessment be submitted? “Per Regulation 11, a new public water system is required to receive approval of the TMF capacity assessment (reviewed against the requirements within this manual) and new water works plans and specifications (reviewed against the requirements in the design criteria) prior to beginning construction of any new water works or improvements. However, Regulation 11 does not apply to water systems until the water system meets the definition of a public water system, as defined by the regulation. This can create a regulatory paradox for prospective systems. To address this, the department expects that prospective systems will submit TMF capacity assessment six months prior to the

date the system anticipates meeting the definition of a public water system. . . ." (Emphasis added).

The County Attorney's Office interprets the regulations above, and CDPHE's interpretation of the same as evidenced by their directions to the County, to indicate they are okay with new central water systems being built, but once there are 15 hookups, no additional hookups can be made until CDPHE completes final review and approval of TMF capacity assessment and construction plans and design. The County Attorney's Office believes that any request by an applicant to go beyond 15 hookups before the water system is built and CDPHE has issued its final approval of the system as a public water system, including TMF assessment, would violate CDPHE's Safe Drinking Water regulations, policies and procedures, and by allowing such, the County could be complicit.

LDC DEPENDABILITY REQUIREMENTS FOR NEW PUBLIC WATER SYSTEMS

LDC 8.4.7.B.4.b. *Conditional Finding of Sufficiency*

"Conditional findings of sufficiency can be made by the Planning Commission and the BoCC specifying conditions that shall be met prior to recording the final plat. Some examples of conditions include, but are not limited to: . . .completion of CDPHE Technical, Managerial, and Financial TMF) analysis and issuance of PWSID number for a new central water system. . . .Once these requirements are met, the conditional finding of sufficiency becomes a finding of sufficiency."

LDC 8.4.7.B.6.g.vi. *Compliance with Drinking Water Regulations*

"When a new community water system subject to the Colorado Primary Drinking Water Regulations is proposed in conjunction with a subdivision, a conditional finding of sufficiency may be issued by the Planning Commission and BoCC in the approval of a preliminary plan or final plat subject to the following:

CDPHE TMF capacity, analysis and approval thereof, as evidenced by issuance of a Public Water System Identification (PWSID) number;

Adequate construction surety for the proposed water system which includes all water works identified in the CDPHE TMF analysis;

Restrictions on the number of building permits or certificates of occupancy issued until the water system is constructed and certified; and

An entity acceptable to the water court, or Colorado Groundwater Commission or the CDPHE shall be formed or engaged to assure operation of the community water system."

SPECIAL CONDITIONS THAT WILL RESULT IN FINDING OF CONDITIONAL SUFFICIENCY FOR DEPENDABILITY

In addition to any other Conditions set forth in the water review, the County Attorney's Office also requires the Special Conditions set forth in Exhibit B to be imposed and followed in order to make its recommendation for a conditional finding of sufficiency for dependability.

EXHIBIT B

SPECIAL CONDITIONS FOR CONDITIONAL FINDING OF SUFFICIENT DEPENDABILITY

The County's primary concern regarding a proposed water supply for a subdivision that is to be supplied by a new community water system that will operate as a public water system is that the water system must be built and operate before the first purchaser occupies a home in the subdivision.

* Any sufficiency finding that is made prior to CDPHE finally approving the Technical, Managerial, and Financial ("TMF") Capacity Assessment when the water system meets CDPHE's definition of a new public water system/community water system will be only conditional sufficiency.

1. Applicant must provide to the County at water sufficiency finding stage (Preliminary Plan or Final Plat) an Acknowledgement Letter from CDPHE, which is issued following preliminary design review, in order to obtain a conditional finding of sufficiency. Conditions 2-3 below will be part of that conditional finding.

*The following also shall be provided at water sufficiency finding stage to facilitate the County Attorney's water sufficiency review:

A copy of the TMF Capacity Assessment and Plans and Specifications, and proof that such has been submitted to CDPHE;

A letter from the water provider (as may be applicable) committing to serve the subdivision indicating the number of lots to be served, the acreage, available supply, and the amount of the demand to be served;

The well completion report for the well(s) that will supply the subdivision;

First water quality sample results and response to such results by both the El Paso County Health Department and CDPHE; and

Other information deemed necessary by the Planning and Community Development Department and/or the County Attorney's Office to evaluate sufficiency.

Pursuant to El Paso County Land Development Code ("LDC") § 8.4.7.B.6.g.vi., the conditional finding of sufficiency will require Applicant to restrict issuance of any Building Permits and Certificates of Occupancy by both a Plat Restriction and a Restrictive Covenant to be recorded in the records of the El Paso County Clerk and Recorder's Office against the legal description of the property encompassed by the Final Plat. The conditional sufficiency and the restriction of issuance of Building Permits and Certificates of Occupancy will enable Applicant to record the initial Final Plat and sell lots prior to completion of construction of the water system infrastructure at its own risk; however, no Building Permits will be issued until the conditions in Paragraph 2 below are satisfied, and no Certificates of Occupancy will be issued until CDPHE makes final approval of TMF Capacity Assessment and construction plans pursuant to Paragraph 3 below.

2. **Prior to issuance of any Building Permits for up to fifteen (15) lots**, the following must occur:
 - a. A professional engineer must certify that the water system infrastructure has been built in accordance with the design, which was the subject of the CDPHE Acknowledgement Letter, and that the system is functional / operational.
 - b. Defect warranty collateral for the water system must be posted with the County.
 - c. The Applicant/Developer or the Special District that will serve the subdivision with water or the Homeowners Association ("HOA") that will be responsible for the water system must identify and describe a proposed water operator acceptable to the County, and how the operator will provide operation, maintenance, and management services for the water system to the Special District or HOA (this may have already occurred as part of the TMF submission).

3. *No more than 15 Building Permits will be authorized until CDPHE has made final approval of the TMF Capacity Assessment and construction plans for the water system after the subdivision has met the definition of a public water system/community water system, and evidence of that approval has been received, reviewed, and found to be satisfactory to the Planning and Community Development Department and the County Attorney's Office. At that time, Certificates of Occupancy for the initial 15 lots may be issued, the restrictions on issuance of further Building Permits and Certificates of Occupancy will be lifted, and the conditional finding of sufficiency as to dependability will convert to a full finding of sufficiency.*



July 20, 2020

Vincent Crowder
Sanctuary of Peace POA
3190 Benet Lane
Colorado Springs, CO 80921

RE: Acknowledgement of Drinking Water Final Plans and Specifications for Construction
Sanctuary of Peace POA Water System, Sanctuary of Peace POA
Public Water System Identification (PWSID) No. CO0121702, El Paso County
ES Project No. ES.20.DWDR.05394

Dear Mr. Crowder:

The Colorado Department of Public Health & Environment (Department), Water Quality Control Division, Engineering Section has received and reviewed the Capacity Assessment Worksheet and Supplemental Information for the Technical, Managerial, and Financial (TMF) Capacity, and the Final Plans and Specifications for the Sanctuary of Peace POA Water System in accordance with Sections 11.4.1(a) and 11.4(1)(b) of the *Colorado Primary Drinking Water Regulations* (Regulation 11). The TMF and design has been found to be in conformance with the current requirements of the *New Public Water System Capacity Planning Manual* and the *State of Colorado Design Criteria For Potable Water Systems* (Design Criteria). At this time, Sanctuary of Peace POA does not meet the definition of a public water system as defined by Section 11.3(57) of the *Colorado Primary Drinking Water Regulations* (Regulation 11), and therefore, the Department does not have the authority by Regulation 11 to approve or deny the capacity assessment or the plans and specifications for construction of the water system. At such time that Sanctuary of Peace POA will meet the definition of a public water system, Sanctuary of Peace POA must submit plans and specifications, and a capacity assessment in accordance with Sections 11.4(1)(a) and 11.4(1)(b) of Regulation 11, and receive design approval. The Sanctuary of Peace POA should anticipate being classified as a community water system.

This acknowledgement is limited to the following:

- Well (SDWIS ID: 001): Groundwater source
 - Well Permit Number 83885-F. Drilled well. Screen: 331-751 feet, total depth: 751 feet, static water level approximately 196 feet.
 - Surface improvements: sloped area away from wellhead.
 - Well improvements: casing raised to provide a minimum of 12 inch between grade and wellhead.
 - Permitted Flow: 50 gallons per minute (gpm).
 - Pumped Flow: 25 gpm.
 - All associated piping and appurtenances.
- Treatment Plant (SDWIS ID: 002)
 - Treatment for Well (001), Maximum flowrate of 25 gpm based on well pump rate.
 - Sodium hypochlorite treatment (421):
 - Sodium hypochlorite feed pump (design basis: diaphragm pump with anti-siphon valve), 35 gallon solution feed tank (design basis: polyethylene tank) and secondary chemical containment curb.
 - Sodium hypochlorite injection point prior to contact time storage tanks.
 - Chlorine pump electrically connected to flow meter for flow paced dosing.
 - Treatment appurtenances. Raw water sampling tap, water meter (design basis: NSF61 certified), handheld chlorine analyzer, 119 gallon pressure tank (design basis: Well-X-Trol) and finished water tap (residual chlorine monitoring location) after storage tanks in the treatment plant.

- Booster pumps: two submersible pumps located in 8-inch pits with watertight well cap next to storage tanks (003) to pump from storage tanks back to treatment plant, operating in lead/standby mode, 20 gpm each, 53-62 psi, with variable frequency drives.
- Associated piping and appurtenances.
- Storage Tanks (SDWIS ID: 003)
 - Two (2) 2,500 gallon buried HDPE storage tanks (design basis: Ace Roto-Mold ACT2500-LPG) utilized for contact time (2,000 gallons minimum operating volume between the two tanks). Tank piping and appurtenances: 4-inch inlet pipe, 4-inch vent that opens downward with 24 mesh non corrodible screen, lockable access hatch with gasket, 4-inch outlet pipe.

Deviations:

The design includes the following deviation(s) from the Design Criteria:

- Section 5.1 of the Design Criteria requires that at least two chemical feeders be provided. The response to Request for Information letter indicates spare parts will be kept on site and the system has the ability to service the pump within 24 hours. Based on the information supplied to support this deviation, the Department accepts this deviation request.

Conditions:

The design must comply with the following conditions:

General Requirements:

- Section 2.21 of the Design Criteria requires all chemicals and materials that come in contact with treated or partially treated water to be ANSI/NSF 60 and 61 certified, respectively, for potable water use.
- All wells, pipes, tanks and equipment that can convey or store water intended for potable use must be disinfected in accordance with current AWWA procedures prior to initial use as required in Sections 2.15, 6.6.2, 7.0.18 and 8.7.7 of the Design Criteria.

Monitoring Notifications:

- The project includes installation of a new well that will require completion of initial monitoring when the water system becomes a public water system.
- The design is capable of providing 4-log virus inactivation. As outlined in the Basis of Design Report, the treatment conditions that must exist to achieve 4-log inactivation of viruses are as follows:
 - The supplier must continuously maintain a chlorine residual of 1.0 mg/L at the entry point monitoring location downstream of the two storage tanks, assuming a flow rate of 25 gpm (well pumping rate), a pH between 6.0-9.0, a liquid temperature at or greater than 5-degrees Celsius, a baffle factor of 0.1 and a minimum active storage volume of 2,000-gallons.

Facility Classification under Regulation 100:

- Based on the current water treatment plant and distribution system design and in accordance with the current Colorado Operators Certification Board regulations, the water treatment plant is anticipated to be a Class "D" water treatment facility and the distribution system is anticipated to be a Class "1" distribution system.

The documents that were reviewed are as follows:

- Basis of Design Report dated February 18, 2020 titled *Sanctuary of Peace POA Water System*. Prepared by M.V.E., Inc. for Sanctuary of Peace POA.
- Capacity Planning Document (TMF) dated February 18, 2020 titled *Sanctuary of Peace POA Community Water System*. Prepared by M.V.E., Inc. and H2O Consultants for Sanctuary of Peace POA.
- Raw water quality data received April 21, 2020 and July 7, 2020.
- Response to Request for Information Letter dated June 17, 2020. Prepared by M.V.E., Inc. for Sanctuary of Peace POA.
- Email correspondence dated July 8, 2020 from M.V.E., Inc. for Sanctuary of Peace POA.
- Miscellaneous correspondence.

Please be advised of the following notifications and requirements that may apply to the project:

- Acknowledgement of this project is based only upon engineering design to provide safe potable water, as required by Regulation 11 and shall in no way influence local building department or local health department decisions on this project. This review does not relieve the owner from compliance with all Federal, State and local regulations and requirements prior to construction nor from responsibility for proper engineering, construction and operation of the facility.
- Any point source discharges of water from the facility are potentially subject to a discharge permit under the State Discharge Permit System. Any point source discharges to state waters without a permit are subject to civil or criminal enforcement action. If you have any questions regarding permit requirements contact the Permits Unit at 303-692-3500.

Please direct any further correspondence regarding the technical approval (plans and specifications/design review) to:

Kristen Harris, P.E.
Colorado Department of Public Health & Environment
Water Quality Control Division - Engineering Section
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Thank you for your time and cooperation in this matter. Please contact me by telephone at 303-692-3538 or by email at kristen.harris@state.co.us if you have any questions.

The Engineering Section is interested in gaining feedback about your experience during the engineering review process. We would appreciate your time to complete a Quality-of-Service Survey regarding your experience during the engineering review process leading up to issuance of this decision letter. The Engineering Section will use your responses and comments to identify strengths, target areas for improvement and evaluate process improvements to better serve your needs. Please take a moment to fill out our survey at the following website: <http://fs8.formsite.com/cohealth/form627710151/index.html>.

Sincerely,

Kristen Harris Digitally signed by Kristen Harris
Date: 2020.07.20 17:29:48 -06'00'

Kristen Harris, P.E.
Senior Review Engineer
Engineering Section | Water Quality Control Division
Colorado Department of Public Health & Environment

cc: David Gorman, M.V.E., Inc.
Charles Crum, M.V.E., Inc.
Lisa Lemmon, El Paso County Public Health
Catherine McGarvy, El Paso County Public Health
Amy Zimmerman, WQCD ES Engineering Review Unit Manager
Haley Orahood, DWCAS, Compliance & Enforcement Unit South
Drinking Water File (CO0121702)