

# EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY  
CIVIL DIVISION

First Assistant County Attorney  
Diana K. May

Amy R. Folsom, County Attorney

Assistant County Attorneys  
M. Cole Emmons  
Lori L. Seago  
Kenneth R. Hodges  
Lisa A. Kirkman  
Steven A. Klaffky  
Peter A. Lichtman

March 1, 2019

**THIS UPDATES, SUPERSEDES, AND REPLACES THE WATER REVIEW DATED FEBRUARY 7, 2019, BECAUSE APPLICANT CHANGED THE ACREAGE OF THE LOTS, WHICH RESULTED IN A CHANGE IN THE AMOUNT OF WATER REQUIRED FOR EACH OF THE LOTS, BUT DID NOT CHANGE THE TOTAL DEMAND. THIS CHANGE REQUIRED A NEW COMMITMENT TO SERVE BY CHEROKEE METROPOLITAN DISTRICT, A NEW REVIEW BY THE STATE ENGINEER'S OFFICE, AND A NEW REVIEW BY THE COUNTY ATTORNEY'S OFFICE.**

Appaloosa Hwy 24 Subdivision Filing No. 2  
Vacate and Replat – VR-18-13

Reviewed by: Cole Emmons, Senior Assistant County Attorney  
Edi Anderson, Paralegal

1. This is a proposal by Platte Valley, LLC ("Applicant") to vacate and replat Lot 2 of Appaloosa Hwy 24 Subdivision No. 2 into 3 industrial-type use lots. The lots are of varying sizes: Lot 1 is 1.003 acres, Lot 2 is 1.008 acres, and Lot 3 is 2.655 acres for a total of approximately 4.67 acres. The property is zoned I-2 (Limited Industrial).

2. The Applicant has provided that the water demand for the subdivision will be provided by the Cherokee Metropolitan District ("District"). Pursuant to the Water Supply Information Summary and the Water Resources Report for the Appaloosa Hwy 24 Subdivision Filing No. 2, Lots 1, 2 & 3, which were provided with the proposal, the Applicant estimates the annual water requirement to serve the 3 commercial lots is 1.247 acre-feet total per year for the development. The total light industrial use will require 0.672 acre-feet per year. Irrigation requirements vary by lot: Lot 1 requires 0.124 acre-feet per year, Lot 2 requires 0.124 acre-feet per year, and Lot 3 requires 0.327 acre-feet per year for a total of 0.575 acre-feet per year. The light industrial use plus irrigation use total 1.247 acre-feet per year. Based on this estimate, the Applicant will need to provide a supply from the District of 374.10 acre-feet (1.247 acre-feet x 300 yrs.) to meet the County's 300 year water supply requirement.

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



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

3. The Water & Wastewater Collections Manager of the District provided formal letters of commitment to serve the development dated June 13, 2018 and February 15, 2019. The February 15th letter noted the revised lot sizes and resulting revised irrigation demand. The water demand for the subdivision now is 0.672 acre-feet/year and the irrigation for the subdivision is 0.575 acre-feet/year, totaling 1.247 acre-feet/year of total water demand for the commercial subdivision. In its June 13<sup>th</sup> letter, the District outlined the favorable opinion of the District's water supply by the State Engineer's Office dated October 2015. The Manager stated that the State Engineer confirmed that the District had a "surplus of 520 acre feet per year of water available for new developments. Since October 2015, the District has issued 183.652 acre feet per year of water commitments leaving 336.348 acre feet per year available to meet future demand. The Appaloosa Highway 24 Subdivision Filing #2 development requires 1.247 acre feet per year of water which leaves the District with 335.101 acre feet per year of water for future developments."

4. In a letter dated February 25, 2019, the State Engineer reviewed updated information for the Appaloosa Hwy 24 Subdivision Filing No. 2. The State Engineer noted District letters dated June 13, 2018 and February 15, 2019, in which the District committed to serve the development in the amount of 1.247 acre-feet/year. The State Engineer described the 3 commercial lots as follows: the "first lot will be 1.003 +/- acres, the second lot will be 1.008 +/- acres, and the third lot will be 2.655 +/- acres." The State Engineer further states that according to their records, "Cherokee has adequate water resources to serve 1.247 acre-feet/year for the proposed development." And further, "[p]ursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply can be provided without causing injury to decreed water rights, and the supply is expected to be adequate."

5. Section 8.4.7(B)(10)(g), of the El Paso County Land Development Code allows for the presumption of acceptable water quality for projects such as this where water is supplied by an existing Community Water Supply operating in conformance with Colorado Primary Drinking Water Regulations unless there is evidence to the contrary that may be provided by the El Paso County Health Department.

6. Analysis and Recommendation. Based on the information the District provided, the District has 336.348 acre-feet/year of available water supply for future developments in the District. The Appaloosa Hwy 24 Subdivision Filing No. 2 requires 1.247 acre-feet of annual water demand for the 3 lot commercial subdivision, which leaves the District with 335.101 acre-feet per year for future developments. Based on the foregoing, there appears to be a sufficient supply available to meet the demands of this development. Therefore, based upon the finding of sufficiency by the State Engineer's Office and no injury to existing water rights, based on Applicant's stated demand of 1.247 acre-feet per year, based on the commitment by the District to serve the property in the amount of 1.247 acre-feet per year, and subject to the requirements set forth 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 may confirm that the District is in compliance with the water quality regulations.

**CONDITION OF COMPLIANCE:**

- A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, and specifications set by the District, including the District's requirement that the project "must achieve appropriate zoning and a final plat land use entitlement from El Paso County Development Services within 12 months of the date of this letter" [letter dated February 15, 2019].

cc: Len Kendall, Planner I