

to one third of that amount or 5.7 acre-feet/year. As a result, there is an available water supply in that amount each year for 300 years. The proposed annual supplies are greater than the demand of 2.0 acre-feet/year for a period of 300 years. Therefore, the State Engineer states that “pursuant to Sections 30-28-136(1)(h)(l), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to water rights.”

The State Engineer further noted that “Well permit no. 83011-F was issued on March 18, 2019 for use of an existing well located on the subject property, that was previously operated under well permit no. 171879. The well permit is issued pursuant to Determination of Water Right No. 3619-BD and its associated Replacement Plan. Based on the Water Supply Letter this well will be used to serve one of the proposed lots.”

4. Determination of Water Right No. 3619-BD, Findings and Order and Replacement Plan. On December 11, 2018, the Colorado Ground Water Commission approved Determination of Water Right No. 3619-BD and the accompanying Replacement Plan.

Water Right No. 3619-BD notes that the quantity of ground water in the Dawson Aquifer underlying the proposal’s approximately 20 acres of land is 1,860 acre-feet; therefore, the “allowed average annual amount of withdrawal from the Aquifer that could be allocated from beneath the Overlying Land would be 18.6 acre-feet per year.” The Determination notes that there is a small-capacity well identified as Permit No. 171879 on the land that is permitted to withdraw “1.5 acre-feet per year of ground water from the Aquifer from beneath the Overlying Land.” Therefore, based on Designated Basin Rules (Rule 5.3.2.4), “the allowed average annual amount of withdrawal ... is reduced to 17.1 acre-feet per year so as to reserve water for that well. The effect of this reservation is to reduce the quantity of Underlying Ground Water which is considered available for allocation to 1,710 acre-feet.” In the Replacement Plan, the Ground Water Commission ordered that the “allowed annual amount of ground water to be withdrawn from the aquifer by all wells operating under this plan shall not exceed 2 acre-feet. The allowed annual amount of water to be withdrawn from each well shall not exceed 1 acre-foot.”

The Replacement Plan provides that the use of ground water for the subdivision is limited to 2.0 acre-feet annually from the Dawson Aquifer and the use for each well is limited to “1 single family residence; irrigation of 10,000 square feet of lawn, garden, and trees; and watering of 4 domestic animals.” The Replacement Plan further directs that return flows from in-house use of ground water “shall occur through individual on-lot non-evaporative septic systems located within the 20 acres of overlying land that are the subject of Determination of Water Right No. 3619-BD” and further, replacement of depletions must be provided annually in the specific amounts as noted in the Replacement Plan to insure alluvial depletions are replaced.

5. Analysis. Applicant's total annual water demand for the Loudermilk Minor Subdivision is 1.0 acre-feet per lot or 2.0 acre-feet for the subdivision. Based on the demand, Applicant must have available 600 acre-feet to adhere to the County's 300-year rule (2.0 acre-feet x 300 years). Pursuant to the Colorado Ground Water Commission's Determination of Water Right No. 3619-BD, Determination of Water Right and the accompanying Replacement Plan, Applicant has available 5.7 acre-feet per year or 1,710 acre-feet total to withdraw during the 300 years. Based on the foregoing, there appears to be a sufficient water supply to meet the water demands of the Loudermilk Minor Subdivision.

6. Section 8.4.7.B.10.g., of the Land Development Code allows for the presumption of acceptable water quality for minor subdivision projects such as this proposal.

7. Therefore, based upon the finding of sufficiency and no injury by the State Engineer, Determination of Water Right No. 3619-BD and Replacement Plan, and based on 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. The County prefers that when there is a replacement plan, 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 Determination of Water Right No. 3619-BD, including the Replacement Plan, and Well Permit No. 83011-F. Pursuant to the Replacement Plan, replacement obligations include providing return flows from a non-evaporative septic system for each lot located within the approximately 20 acres of overlying land. As noted in the Determination, Applicant, its successors and assigns, are required to replace the specified amount of annual depletions. The Covenants or deed restrictions shall recite that return flows from non-evaporative septic systems shall comply with those amounts set forth in Exhibit A to Replacement Plan No. 3619-BD, which is also attached hereto as Exhibit A to this letter, 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.

The Covenants or deed restrictions shall recite the specific requirement of the Replacement Plan, which requires that at least one Dawson Aquifer well ". . . must be serving an occupied single-family dwelling that is generating return flows via a non-evaporative septic system before any irrigation or animal watering is allowed to be served

by any of the wells.” 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 Replacement Plan. Such Covenants or deed restrictions shall also address responsibility for installing totalizing flow meters on the Dawson wells and the obligations for operation, monitoring and accounting of the Replacement Plan. Finally, the Covenants or deed restrictions shall recite that because the Replacement Plan limits the wells to pumping for 300 years, there are no post-pumping depletion requirements.

B. Applicant, its successors and assigns, shall reserve in the Covenants or the deed restrictions the total supply of 1,710 acre-feet of Dawson Aquifer water for use in the subdivision. Applicant, its successors and assigns, shall convey in any deeds of the Property at the time of lot sales to successor owners, sufficient water rights in the Dawson Aquifer underlying the Property, pursuant to the Determination of Water Right No. 3619-BD and Replacement Plan, to satisfy El Paso County’s 300 year water supply requirement. Said Covenants or deed restrictions 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 lots. 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.

C. Applicant, its successors and assigns, 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 shall be approved by the Planning and Community Development Department and the County Attorney’s Office prior to recording the final plat. Said Covenants or deed restrictions shall cross-reference the Colorado Ground Water Commission’s Determination of Water Right No. 3619-BD, and the accompanying Replacement Plan, and shall identify the obligations of the lot owner thereunder.

D. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the Colorado Ground Water Commission’s Determination of Water Right No. 3619-BD and the Replacement Plan in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

E. 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 alternative renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.”

cc: Gabe Sevigny, Reviewer, Planner II