

# EL PASO COUNTY



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High Plains Subdivision

SP-18-3 Preliminary Plan  
SF-18-24 Final Plat

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

1. This is a proposal by Savage Development Inc. ("Applicant"), to subdivide approximately 39.4 acres of land into 7 single-family lots consisting of approximately 5 acres per lot, plus right-of-way, overhead utility development, and no-build areas in a flood plain. The property is zoned RR-5 (Residential Rural).

2. The Applicant has provided for the source of water to derive from individual on-lot wells. The source of water for each lot will be the Dawson bedrock aquifer and the parcel is subject to the *Findings of Fact, Conclusions of Law, Ruling of Referee and Decree* in District Court Water Divisions 1 and 2, Consolidated Case Nos. 18CW3017 and 18CW3006 ("Decree"). The Decree provides that "Savage Wells Nos. 1 through 7 will be located on the Applicant's Property" and "Applicant is awarded the vested right to use Savage Wells Nos. 1 through 7, along with any necessary additional or replacement wells associated with such structures ...." Pursuant to the Water Supply Information Summary, the Applicant estimates its annual water needs to serve the subdivision at 3.78 acre-feet/year, which equates to a water demand of 0.54 acre-feet/lot (0.26 acre-feet/lot for residential needs and 0.28 acre-feet per lot for other uses such as irrigation of 4,920 square feet of lawn and garden and watering for up to 4 horses or equivalent livestock). The Water Resources Report states "[t]here is no proposed common area landscaping with the development." Applicant will need to supply 1,134 acre-feet of water (3.78 acre-feet/year x 300 years) to meet the County's 300-year water supply requirement.

3. In a letter dated July 25, 2018, the State Engineer's Office provided its review of the High Plains subdivision proposed water supply. The State Engineer indicated that the 7 lots will be served by the Dawson Aquifer operating pursuant to the

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decreed augmentation plan in Case Nos. 2018CW3017 and 2018CW3006. The State Engineer indicates that the Decree “allows for the annual withdrawal of 3.78 acre-feet from the not nontributary Dawson aquifer for up to seven individual on lot wells, based on a 300 year allocation approach. The augmentation plan states the ground water allocation for each well is 0.54 acre-feet per year for 300 years, which will be used for household use (0.26 acre-feet per year) and 0.28 acre-feet per year per residence is available for other uses, for example irrigation of approximately 4,920 square feet of lawn and garden and the watering of up to four horses or equivalent livestock.”

As noted by the State Engineer, the Decree sets forth the amount of water underlying the 39.4-acre parcel as follows:

<b>Aquifer</b>	<b>Based on 300 year allocation approach</b>
<i>Dawson</i>	<i>12.7 acre-feet/year</i>
<i>Denver</i>	<i>11.1 acre-feet/year</i>
<i>Arapahoe</i>	<i>5.4 acre-feet/year</i>
<i>Laramie-Fox Hills</i>	<i>3.8 acre-feet/year</i>

Pursuant to the Decree, the annual demand for the subdivision “is equal to the allowed average annual amount of withdrawal of 3.78 acre-feet/year, allowed by the augmentation plan. As a result, the water may be withdrawn in that annual amount for a maximum of 300 years” per the State Engineer. Pursuant to C.R.S. § 30-28-136(1)(h)(I) and (II), the State Engineer offered the opinion that “the proposed 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(10) of the El Paso County Land Development Code must be satisfied.

5. Plan for Augmentation. The Decree provides for subdivision of the 39.4-acre property into 7 lots, identified as Savage Wells 1 through 7, with a Dawson Aquifer well to serve each lot. The Decree adjudicates the following water rights: 3,820 acre-feet in the not nontributary Dawson Aquifer, 3,350 acre-feet in the nontributary Denver Aquifer, 1,620 acre-feet in the nontributary Arapahoe Aquifer, and 1,150 acre-feet in the nontributary Laramie-Fox Hills Aquifer. For 3,820 total acre-feet of Dawson Aquifer water, the annual withdrawal for 300 years would be 12.7 acre-feet/year. All groundwater may be used for the following beneficial uses: domestic, commercial, irrigation, stock water, recreation, wildlife, wetlands, fire protection, piscatorial, storage, and augmentation associated with the uses. The Decree allows each of the 7 lots to pump up to 0.54 acre-feet/year for a maximum total of 3.78 acre-feet/year from the Dawson Aquifer. It allows household use of up to 0.26 acre-feet/year and 0.28 acre-feet/year for other allowed uses.

Replacement of depletions during pumping. The plan for augmentation requires that actual stream system depletions during the 300 years of pumping the Dawson Aquifer are to be replaced by residential return flows from non-evaporative septic systems.

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 Decree requires the Applicant, its successors and assigns, to replace the actual depletions caused by pumping the Dawson Aquifer wells that impact the stream system after pumping ceases. The Decree requires the Applicant to “. . . reserve up to 1,022 acre-feet of water from the nontributary Laramie Fox Hills aquifer, accounting for actual stream depletions replaced during the plan pumping period, calculated at 132 acre feet, or such greater amounts as necessary to replace any injurious post pumping depletions.” (Emphasis added). This is less than a 1:1 replacement of the 1,134 acre-feet of Dawson Aquifer water that will be pumped during 300 years; however, the Water Court says the replacements to the South Platte River system are sufficient under this plan. In other words, it appears the Court took 1,134 acre-feet of the Dawson Aquifer demand, subtracted 132 acre-feet of depletions during pumping, which equals 1,022 acre-feet (likely the Court rounded to 1,022 acre-feet) to arrive at the amount of post-pumping depletions that will have to be replaced. The Decree requires that the Applicant, its successors and assigns, replace all depletions to the South Platte River system.

Paragraph 40 of the Decree states “[t]o the extent that Applicant or one of its successors or assigns is ever unable to provide the replacement water required, then the Savage Wells Nos. 1 through 7 shall not be entitled to operate under the protection of this plan, and shall be subject to administration and curtailment in accordance with the laws, rules, and regulations of the State of Colorado.” In order to provide better assurance that the post-pumping depletions will be met, the Requirements below will require Applicant, its successors and assigns, to convey all of the 1,150 acre-feet of Laramie-Fox Hills Aquifer water to the HOA to use for replacing post-pumping depletions.

6. Analysis: The Decree provides that the “Savage Wells Nos. 1 through 7 may each pump up to 0.54 acre feet of water per year, for a maximum total of 3.78 acre-feet being withdrawn from the Dawson aquifer annually.” With an annual available supply of 12.7 acre-feet from the Dawson Aquifer, a decreed amount of supply of 3.78 acre-feet/year, and a demand of 3.78 acre-feet/year, the quantity of water supply appears to be sufficient to meet the County’s 300 year aquifer life requirement. Furthermore, with a total available supply based on the Decree of 3,820 acre-feet of Dawson Aquifer water, 3,350 acre-feet of Denver Aquifer water, 1,620 acre-feet of Arapahoe Aquifer water, and 1,150 acre-feet of Laramie-Fox Hills Aquifer water, and an annual demand allowed by the Decree of 3.78 acre-feet/year (1,134 acre-feet total for 300 years) of Dawson Aquifer water, there should be a sufficient supply to meet the County’s 300 year water supply rule.

7. Therefore, at this time, based upon the finding of no injury and sufficiency by the State Engineer, the Water Court’s Decree and plan for augmentation, and based 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 for the High Plains subdivision. The El Paso County Health Department shall provide an opinion as to quality.

REQUIREMENTS:

A. Applicant shall take all necessary steps to ensure that should Applicant convey the property for this subdivision, that the appropriate water rights and obligations of the Decree are also conveyed to the successor purchaser. These Requirements shall apply to the Applicant and its successors and assigns. Applicant, its successors and assigns, shall create a Homeowners' Association ("HOA") and advise the HOA and all future owners of these lots of all applicable requirements of the Decree entered in District Court Water Division Consolidated Case Nos. 18CW3017 (Div. 1) and 18CW3006 (Div. 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, including the costs for constructing and pumping the Laramie-Fox Hills Aquifer well(s) for replacing post-pumping depletions, and the responsibility for metering and collecting data regarding water withdrawals from all wells.

B. Applicant shall reserve and convey by warranty deed to the HOA, Applicant's interests, rights, and obligations in all of the 1,150 acre-feet of Laramie-Fox Hills Aquifer groundwater to be used for replacing post-pumping depletions, In order to provide better assurance that the post-pumping depletions will be met pursuant to Paragraph 40 of the Decree. Applicant shall 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. The conveyance instruments and/or deed(s) shall provide that these water rights shall be appurtenant to the land, to be used for replacing depletions to the applicable stream system, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. Such conveyance instruments and/or deed(s) shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the final plat.

C. Applicant shall require non-evaporative septic systems to replace depletions during 300 years of pumping from the Dawson Aquifer. Deeds for the subdivision property as a whole and for lots shall specifically state that all return flows shall be dedicated by Grantee to replacing depletions during pumping of the Dawson Aquifer pursuant to the plan for augmentation, and said return flows shall not be sold, leased or otherwise used for any other purpose, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered. In addition, the Covenants shall recite that return flows from non-evaporative septic systems shall comply with the requirements of the plan for augmentation, that such return flows shall only be used to replace depletions, shall not be sold, leased or otherwise used for any other purpose, shall not be separated from the transfer of title to the land, and shall not be separately conveyed, bartered, or encumbered.

D. 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) 162 acre-feet (0.54 acre-feet/lot x 300 yrs.). Said conveyance instrument shall recite that this water shall not be separated from transfer of title to the lot and shall be used exclusively for the primary supply and augmentation for the lot. Applicant shall provide a form warranty deed for review and approval to the Planning and Community Development Department and the County Attorney's Office prior to recording the plat. 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.

D. Applicant shall submit Declaration of Covenants, Conditions, and Restrictions as well as Bylaws and Articles of Incorporation of the HOA 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 Declaration shall cross-reference the decreed augmentation plan, the water rights decree, 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.

E. Applicant, its successors and assigns, shall record all applicable documents, including but not limited to, the Decree, 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.

F. 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 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: Nina Ruiz, Project Manager/Planner II