

adjudicated and the applicant is owner of a pro-rata allocation of the Dawson, Denver and Laramie Fox-Hills aquifers.”

The following amounts of water have been adjudicated and are available under the Property:

Aquifer	Tributary Status	Volume (A/F)	Annual Allocation acre/feet (100/year)	Annual Allocation acre-feet (300/year)
Dawson	NNT	2,360	23.6	7.87
Denver	NNT	3,380	33.8	*
Laramie-Fox Hills	NT	1,078	10.78	*

* The State Engineer indicates these values were omitted from the table in the decree (18CW3052).

The State Engineer stated that the “plan for augmentation decreed in Division 2 Water Court case no. 2018CW3052 allows for diversion of 2.0 acre-feet annually from Dawson aquifer for a maximum of 300 years.”²

The State Engineer further noted that a well permit (No. 302149) was previously issued and is located on the property. The Applicant has “proposed to continue to utilize the existing well pursuant to the decreed plan for augmentation. This will require that the applicant apply for, and obtain a new well permit issued pursuant to Section 37-90-137(4) C.R.S., or plug and abandon this well” [emphasis removed]. Finally, the State Engineer provided the opinion 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(4) 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, Division 2 Case No. 01CW140. The Water Court Decree adjudicated water in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers in the name of William R. Brown, Jr., Exemption Equivalent Trust (“Brown Trust”) underlying two parcels in Sections 20 and 21, T 11 S, R 66 W, 6th P.M., comprising approximately 184 acres, which includes the 36.65 acre portion of property in Section 21 and the water and water rights underlying the same in the respective amounts identified in the Table in Paragraph 3 above now owned by Applicant, and which are the subject of this minor subdivision application. As further explained below, the Applicant is now the owner of a pro-rata allocation in the Dawson, Denver,

² The State Engineer’s letter dated November 18, 2019, states that in the “updated Water Supply Information Summary received in the submittal, the estimated water demand for the development is incorrectly identified as 3 acre-feet/year for each lot.” Subsequent to the November 18th letter, the Applicant has corrected the WSIS and it now correctly indicates a water demand of 1.0 acre-feet/year for each lot.

and Laramie-Fox Hills aquifers (Applicant has no rights in the Arapahoe aquifer) since Applicant owns only a portion of both the overlying land and the water and water rights adjudicated in this Decree.

5. Water Rights Title. As indicated above, Applicant owns a pro-rata allocation in the Dawson, Denver, and Laramie-Fox Hills aquifers as a result of the Adjudication Decree and subsequent conveyances of only portions of the overlying land and water and water rights addressed in the Adjudication Decree. Subsequent to the Adjudication Decree, the Brown Trust conveyed all of the overlying land and water and water rights subject to the Adjudication Decree to Margaret E. Scholl and Randy Scholl, pursuant to Trustee Deed dated April 3, 2003, recorded April 7, 2003, in the records of the El Paso County Clerk and Recorder's Office at Reception No. 203069905. The Scholls then conveyed the portion of the overlying land in the SW1/4 of Section 21 plus the water and water rights identified in the Table in Paragraph 3 above, which are the subject of this application, to Barry W. Curtis and Tanja T. Curtis, in joint tenancy, by Special Warranty Deed dated November 20, 2015, recorded December 2, 2015, in the records of the El Paso County Clerk and Recorder's Office at Reception No. 215129626. Applicant is Barry and Tanja Curtis; however, as indicated below, the water rights subject to the plan for administration were decreed in the name of the Curtis Family Living Trust. As further explained in the Requirements, Applicant will have to complete/cure title and provide acceptable proof of the same for the underlying land and water and water rights into the proper fee holder.

6. Decree and Augmentation Plan, Division 2, Case No. 18CW3052 ("Augmentation Decree"). The Augmentation Decree is in the name of the Curtis Family Living Trust and approves the plan for augmentation to allow withdrawal of the not nontributary Dawson aquifer water for this subdivision using septic return flows from 2 wells to replace depletions to the stream system during 300 years of pumping the Dawson aquifer and using Laramie-Fox Hills water to replace post-pumping depletions.

The Decree provides for maximum withdrawal of 1.0 acre-feet of water per residence for a total of 2.0 acre-feet annually from the Dawson aquifer water through Curtis Wells Nos. 1 and 2 for 300 years. Pursuant to the Augmentation Plan, the households will use 0.25 acre-feet of water per year per lot for household use, with the remaining allocation for other uses to include irrigation and stock watering.

Replacement of Depletions During Pumping. The plan for augmentation provides for a pumping period of a minimum of 300 years. For any wells constructed into the not-nontributary 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 Augmentation Decree indicates maximum stream depletions for residential pumping will be 0.45 acre-feet per year. The Decree then indicates the consumptive use for non-evaporative septic systems is 10% per year per residence; therefore, at an annual household use rate of 0.25 acre-feet per lot, 0.225 acre-feet is replaced to the

stream system per year. Pumping for 300 years at a rate of 0.5 acre-feet per year [2 lots at 0.25 acre-feet/yr. for household use] will result in 0.45 acre-feet replacement to the stream system per year; therefore, the stream depletions will be adequately augmented.

Replacement of Post-Pumping Depletions. The Decree requires the Applicant to replace any injurious post-pumping depletions by reserving up to 530 acre-feet of water from the nontributary Laramie-Fox Hills aquifer [this is 600 acre-feet of pumping for 300 years less 70 acre-feet of actual stream depletions replaced calculated by the Division]. Applicant must construct wells into the Laramie-Fox Hills aquifer to replace post-pumping depletions. The reserved Laramie-Fox Hills aquifer 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.

7. Analysis. Applicant's water demand for the Tanja Curtis Minor Subdivision is 1.0 acre-feet per lot or 2.0 acre-feet annually using Dawson aquifer water allowed under the plan for augmentation for the 2 lot subdivision for a total demand of 600 acre-feet for the subdivision for 300 years. The Augmentation Decree and Augmentation Plan in District Court Water Division 2, Case No. 18CW3052, authorizes withdrawal of 2.0 acre-feet/year of Dawson aquifer water per year for a period of 300 years from an available supply of 2,360 acre-feet or 7.87 acre-feet per year for 300 years. Therefore, there appears to be a sufficient water supply to meet the water demands of the Tanja Curtis Minor Subdivision.

8. 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.

9. Therefore, based upon the Water Supply Information Summary, based on the finding of sufficiency and no injury by the State Engineer, based on the Adjudication Decree in District Court Water Division 2, Case No. 2001CW140, and the Augmentation Decree in District Court Water Division 2, Case No. 18CV3052, 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. Prior to recording the minor subdivision plat, Applicant shall take necessary steps to complete/cure the chain of title for both the underlying land and the water and water rights into the proper fee holder and provide proof of the same acceptable to the Planning and Community Development Department and the County Attorney's Office. The underlying land and water and water rights were conveyed by the Scholls to Barry W. Curtis and Tanja T. Curtis in joint tenancy. The Augmentation Decree is in the name of the Curtis Family Living Trust. The title commitment states that the Property is in the name of Barry Wayne Curtis and Tanja Thereas Curtis, as co-Trustees of the Curtis Family Living Trust, U/A dated February 9, 2018.

B. Applicant, its successors and assigns, shall comply with all requirements of the Augmentation Decree, District Court Water Division 2, Case No. 18CW3052, specifically, that water use shall not exceed 2.0 acre-feet annually for the 2 lot subdivision; 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.

C. The County prefers that when there is a plan for augmentation, that Applicant, its successors and assigns, create a homeowners' association ("HOA"); however, alternatively to establishing an HOA, especially for minor subdivisions such as this, Applicant, its successors and assigns, shall create restrictive covenants 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 District Court Water Division 2, Case No. 18CW3052, 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, and 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 more specifically shall require the Dawson aquifer wells to serve on each lot an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the wells. In addition, the Covenants shall advise 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 a Laramie-Fox Hills aquifer well 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 wells 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.

The covenants shall address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 600 acre-feet of not nontributary Dawson aquifer water pursuant to the plan for augmentation in the Augmentation Decree, District Court Water Division 2, Case No. 18CW3052, to satisfy El Paso County's 300 year water supply requirement for the 2 lots of the Tanja Curtis Minor Subdivision.
- 2) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner 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 more specifically shall require the Dawson aquifer

well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. 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 following or similar language shall be included in the Covenants to address future conveyances of the lots subsequent to the initial conveyance made by Applicant/Declarant: "The water rights referenced herein shall be explicitly conveyed; however, if a successor lot owner fails to so explicitly convey the water rights, such water rights shall be intended to be conveyed pursuant to the appurtenance clause in any deed conveying said lot, whether or not the plan for augmentation in District Court Water Division 2, Case No. 18CW3052, and the water rights therein are specifically referenced in such deed. The water rights so conveyed shall be appurtenant to the lot with which they are conveyed, 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."

4) The Covenants shall advise 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 existing Dawson aquifer well and future wells which may be constructed in the Laramie-Fox Hills aquifer.

5) 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 Tanja Curtis Minor Subdivision pursuant to the plan for augmentation in District Court Water Division 2, Case No. 18CW3052. 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 a Determination 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."

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

“These Covenants shall not terminate unless the requirements of the plan for augmentation in District Court Water Division 2, Case No. 18CW3052 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.”

D. Applicant, its successors and assigns, shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 1.0 acre-feet per lot annually and shall reserve a total decreed amount of at least 2.0 acre-feet of Dawson aquifer water for the 2 lots in the subdivision for 300 years for a total of 600 acre-feet for the 2 lot subdivision for 300 years. Said reservation 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 convey by recorded warranty deed these reserved Dawson aquifer water rights to the individual lot owners. 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 minor subdivision plat.

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 each of the 2 lots of the Tanja Curtis Minor Subdivision, The water rights so conveyed, and the return flows therefrom, shall be appurtenant to each of the respective lots with which they are conveyed, 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.”

E. Applicant shall reserve in the Covenants and/or in any deeds of the Property at least 530 acre-feet of water in the Laramie-Fox Hills aquifer for use in the augmentation plan to replace post-pumping depletions. Pursuant to the Decree and plan for augmentation, 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 Laramie-Fox Hills aquifer water rights to the HOA or to the individual lot owners (with appropriate deed restrictions) 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 minor subdivision plat.

F. Applicant, its successors and assigns, at the time of lot sales, shall convey by warranty deed to individual lot owner(s) sufficient water rights in the Dawson aquifer, pursuant to District Court Water Division 2, Case No. 18CW3052, underlying the respective lots to satisfy

El Paso County's 300 year water supply requirement. Dawson aquifer requirements for each lot are as follows: 300 acre-feet for each lot (1.0 acre-feet/year x 300 yrs.). Said conveyance instruments 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 and replacement during pumping for the respective lots. Applicant shall provide form deeds for such conveyances that shall be reviewed and approved by both the Planning and Community Development Department and the County Attorney's Office prior to recording the minor subdivision plat.

G. 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 final plat. Said Declaration shall cross-reference District Court Water Division 2, Case No. 18CW3052 (including plan for augmentation) and shall identify the obligations of the individual lot owners thereunder.

H. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, the decree in District Court Water Division 2, Case No. 18CW3052 (including plan for augmentation) 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.

I. As noted by the State Engineer's Office, the Applicant must obtain well permits pursuant to C.R.S. § 37-90-137(4) and pursuant to the Decree and plan for augmentation in District Court Water Division 2, Case No. 18CW3052.

J. Prior to recording the minor subdivision plat, Applicant shall provide proof acceptable to both the Planning and Community Development Department and the County Attorney's Office that it has complied with the State Engineer's requirement that if Applicant intends to continue to use the existing well pursuant to the plan for augmentation, that it has obtained a new well permit issued pursuant to C.R.S. § 37-90-137(4) or that it has plugged and abandoned that well.

K. 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: Nina Ruiz, Planner III