

EL PASO COUNTY



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November 9, 2021

MS-21-5 Crowe Minor Subdivision

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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by Michael Crowe, Ruth Griffith-Crowe, and Robert Crowe ("Applicant") for subdivision of 3 single-family lots from an existing 20.052-acre parcel (the "property"). Lots 1 and 3 will be approximately 5 acres and the existing lot 2 will be approximately 9 acres. The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the subdivision demand is 0.26 acre-feet/lot for in-house use, 0.60 acre-feet for irrigation, and 0.72 acre-feet for stock watering, for a total of 2.10 acre-feet/year for the 3-lot subdivision (0.70 acre-feet/lot/year). Based on the total demand, Applicant must be able to provide a supply of 630 acre-feet of water (2.10 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

Proposed Water Supply

3. The Applicant has provided for the source of water to derive from individual on-lot wells, as provided in Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Water Division 2, Case No. 19CW3079 dated June 25, 2020 ("Decree" and/or "Augmentation Plan"). The Decree adjudicates the following water supply beneath Applicant's property:

AQUIFER	Annual Average Withdrawal 100 Years (Acre Feet)	Annual Average Withdrawal 300 Years (Acre Feet)	Total Withdrawal (Acre Feet)
Dawson (NNT)	12.0	4.0	1200
Denver (NNT)	18.2	6.1	1820
Arapahoe (NT)	7.99	2.6	799
Laramie-Fox Hills (NT)	5.73	1.9	573

The Decree and Augmentation Plan provides that Applicant has a “vested right to use Crowe Wells Nos. 1 through 4, along with any necessary additional or replacement wells” And further, that if 3 lots are developed, the “Crowe Wells Nos. 1 through 3 are each entitled to pump up to 0.7 acre-feet per lot.” Permitted water use on the property includes household use and “irrigation of lawn, greenhouse, and garden and the watering of up to four horses or equivalent livestock, per residence.” The Augmentation Plan requires the replacement of actual stream depletions during pumping which shall be “effectively replaced by residential return flows from non-evaporative septic systems.” Further, Applicant must reserve their 573 acre-feet of Laramie-Fox Hills aquifer water rights to replace post-pumping depletions.

4. Applicant provided a *Water Resources Report for Crowe Subdivision Filing No. 1* dated October 1, 2021 by MVE, Inc. (“*Report*”). The *Report* summarizes the wells and water demands noting that all 3 wells will utilize 0.26 acre-feet/year for household use, 0.20 acre-feet/year for irrigation, and 0.24 acre-feet/year for stock-watering for a total of 0.70 acre-feet/year/lot, which totals 2.10 acre-feet/year for the subdivision.

The *Report* states that the “water supply for the residential lots using three (3) Dawson aquifer wells pursuant to the augmentation plan ... is sufficient” Further, it states that the Augmentation Plan requires replacement of actual stream depletions and reservation of all of Applicant’s available Laramie-Fox Hills aquifer water (573 acre-feet).

State Engineer’s Office Opinion

5. In a letter dated July 29, 2021, the State Engineer reviewed the proposal to subdivide the 20 +/- acre parcel into 3 single-family lots. The State Engineer stated that the “source of water is to be provided by three on-lot wells. All three wells will be completed into the Dawson aquifer. These wells will operate pursuant to the augmentation plan decreed in case no. 2019CW3079 (Division 2). The water underlying this property was adjudicated and the applicant is the owner of the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers.” The State Engineer identified the total estimated water requirement at 2.10 acre-feet/year (0.70 acre-feet/year per residential lot) for household use, irrigation and stock-watering.

The State Engineer noted that there is an existing well and well permit (no. 98194) on the property and that if Applicant intends to use this well, Applicant will need to obtain a new well permit pursuant to C.R.S. § 37-90-137(4).

The State Engineer stated that the “annual estimated demand, for the entire subdivision, is a maximum of 2.12 acre-feet as allowed by the augmentation plan.” And finally, “[b]ased on the above, it is our 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 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”

Recommended Findings

6. Quantity and Dependability. Applicant’s water demand for the Crowe Minor Subdivision is 2.10 acre-feet per year from the Dawson aquifer for a total demand of 630 acre-feet for the subdivision for 300 years, with replacement water occurring through non-evaporative septic systems to replace actual stream depletions, and with post-pumping depletions being met by the 573 acre-feet of Laramie-Fox Hills water owned by the Applicant.

Based on the water demand of 2.10 acre-feet/year for the Crowe Minor Subdivision and the Decree and Augmentation Plan permitting withdrawals in the amount of 2.10 acre-feet/year, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for Crowe Minor Subdivision.

7. Quality. The water quality requirements of Section 8.4.7.B.10 of the Land Development Code must be satisfied. **El Paso County Public Health shall provide a recommendation as to the sufficiency of water quality.**

8. Basis. The County Attorney’s Office reviewed the following documents in preparing this review: Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079 dated June 25, 2020, the Water Supply Information Summary provided August 5, 30, 2021, the *Water Resources Report* dated October 1, 2021, and the State Engineer Office’s Opinion dated July 29, 2021. The recommendations herein are based on the information contained in such documents and on compliance with the requirements set forth below. ***Should the information relied upon be found to be incorrect, or should the below requirements not be met, the County Attorney’s Office reserves the right to amend or withdraw its recommendations.***

REQUIREMENTS:

A. Applicant and its successors and assigns shall comply with the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079 (“Decree and Augmentation Plan”). Water use shall not exceed 2.10 acre-feet annually for the 3-lot subdivision. Withdrawals from

Crowe Wells Nos. 1 through 3 shall not exceed 0.70 acre-feet/year/lot. Stream depletions shall be replaced with non-evaporative septic system return flows for a period of 300 years and post-pumping depletions will be replaced by Laramie-Fox Hills aquifer water pursuant to the Augmentation Plan.

B. The County prefers that when there is a augmentation plan, Applicant create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water determinations and replacement plans for the property. For minor subdivisions such as this, however, Applicant may elect to solely rely on the covenant provisions required below and forego creation of an HOA.

C. Applicant and 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 and their successors and assigns regarding all applicable requirements of the Decree and Augmentation Plan, including their obligations to comply with the augmentation plan.

The covenants shall specifically address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 630 acre-feet of not nontributary Dawson aquifer water pursuant to Decree and Augmentation Plan to satisfy El Paso County's 300-year water supply requirement for the 3 residential lots of the Crowe Minor Subdivision. The Covenants shall further identify that 210 acre-feet (0.70 acre-feet/year) of Dawson aquifer water is allocated to each of the three lots.
- 2) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of compliance with the Decree and Augmentation Plan, which include pumping of the Dawson wells in a manner to replace depletions during pumping and drilling Laramie-Fox Hills aquifer wells in the future to replace post-pumping depletions.
- 3) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each residential 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."

4) Require reservation of 573 acre-feet of Laramie-Fox Hills aquifer water to replace post-pumping depletions pursuant to the Decree and Augmentation Plan. The Covenants shall further identify that 191 acre-feet of Laramie-Fox Hills aquifer water is allocated to each of the 3 lots. The Covenants shall recite that this water shall not be separated from transfer of title to the property and shall be used exclusively for augmentation supply.

5) Address future lot conveyances. 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 Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079 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.”

6) Advise of monitoring requirements. The Covenants shall advise future lot owners of this subdivision and their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from Dawson aquifer wells.

7) Address amendments to the covenants. 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 Crowe Minor Subdivision pursuant to the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079. 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.”

8) Address termination of the Covenants. The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079 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 and its successor assigns shall reserve and convey by recorded warranty deed the reserved Dawson and Laramie-Fox Hills aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson and Laramie-Fox Hills aquifers underlying the respective lots pursuant to the Decree and Augmentation Plan. Sufficient water rights are 210 acre-feet of Dawson aquifer water for each lot and 191 acre-feet of Laramie-Fox Hills aquifer water for each lot.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson and Laramie-Fox Hills aquifers): “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, replacement during pumping, and replacement of post-pumping depletions for each lot of the Crowe 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 and its successors and assigns shall submit Covenants, form deeds, 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 documents shall cross-reference the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079 and shall identify the obligations of the individual lot owners thereunder.

F. Applicant and its successors and assigns shall record all applicable documents, including, but not limited to, Findings of Fact, Conclusions of Law, Ruling of Referee and Decree

Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079 and any assignments thereof, any warranty deeds regarding the water rights, and any Declaration of Covenants in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.

G. Applicant and/or lot owners must obtain well permits pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation, Case No. 19CW3079.

H. Prior to recording the final plat, Applicant shall upload the following to eDARP:

- A *Water Resources Report* that corrects the reference on page 2 indicating that the currently constructed Crowe Well No. 1 will be utilized on lot 1.

I. 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: Mercedes Rivas, Planner II