



EL PASO COUNTY

Office of the County Attorney
Civil Division

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October 1, 2026

VR-26-1 AFT Ranch Subdivision Filing No. 2

Reviewed by: Lori L. Seago, Senior County Attorney
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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal for approval of AFT Ranch Subdivision Filing No. 2, a lot line vacate and replat application by Charles and Nancy Shea ("Applicant") which consist of 2 lots on 35 acres (the "property"). The project subdivides Lot 1, AFT Ranch Subdivision Filing No. 1 into two lots (1A and 1B). The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. According to the Water Supply Information Summary, the estimated demand for each of three dwelling units is 1.0 acre-foot/year, to include indoor household use, irrigation, and stock watering, for a total subdivision demand of 3.0 acre-feet/year. The Water Resource Report clarifies that indoor household is estimated to demand 0.26 acre-feet/year per dwelling unit, with up to 0.751 acre-feet/year used for other permitted uses such as irrigation, stock watering swimming pool, dust suppression, and firefighting, resulting in a total subdivision demand of 3.033 acre-feet/year. Based on this total demand, Applicant must be able to provide a supply of 909.9 acre-feet of water (3.033 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 up to three (3) wells, including two existing on Lot 1A (Well Permit Nos. 80236-F & 82423-F), withdrawing from the non-tributary Denver aquifer as provided in the Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan. The Decree allocated 9.0 acre-feet of Denver aquifer water per year for 300 years to the overlying 39 acres of property, of which this property is a part. The Augmentation Plan allows water to be withdrawn from the Denver aquifer through up to five wells. There are three wells currently serving the existing subdivision, with one well expected to be drilled with this filing. Based on the estimation of four wells in the Denver aquifer, the Augmentation plan allows for the maximum of 1.001 acre-feet per well for up to four wells, for a total pumping period of 300 years.

The approved Augmentation Plan has a term of 300 years and requires that septic system return flows be used for replacement during the pumping period for the approved wells. To ensure adequate return flows, at least one well must be serving an occupied single-family dwelling that is generating return flows. All 1,130 acre-feet of the Laramie-Fox Hills aquifer water shall be reserved for the replacement of post-pumping depletions under the plan for augmentation.

State Engineer's Office Opinion

4. In a letter dated June 23, 2026, the State Engineer stated that "[t]he proposed source of water is individual on-lot wells producing from the not-nontributary Denver aquifer..." There are currently three well permits serving the existing subdivision, 79187-F (Lot 2), 80236-F and 82423-F (Lot 1) with a fourth well planned to be drilled. Based on the Augmentation plan, these wells need to file well permit applications to re-permit the wells to allow up to the maximum withdrawal of 1.001 acre-feet/year per well. A fourth well permit for proposed Lot 1b cannot be issued until all wells are re-permitted for the lower annual amount."

Finally, the State Engineer stated that, "... pursuant to 30-28-136(1)(h)(I), C.R.S., it is our opinion that the proposed water supply is adequate and can be provided without causing injury to decreed water rights on the condition the wells under well permit nos. 79187-F, 80236-F and 82423-F file an application to be re-permitted to the updated maximum annual amount of 1.001 acre-feet/year."

Recommended Findings

5. Quantity and Dependability. Applicant's water demand for the AFT Ranch Subdivision Filing No. 2 is 3.033 acre-feet per year for 300 years for a total demand of 909.9 acre-feet for the subdivision for 300 years. The Augmentation Plan allows for up to five wells on the overlying property, however, this subdivision will result in four wells at this time, limited to an annual withdrawal of 1.001 acre-feet per well for 300 years.

Based on the water demand of 3.033 acre-feet/year for 300 years, the AFT Ranch Subdivision Filing No. 2 and the Augmentation Plan permitting withdrawals in that nearly that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the AFT Ranch Subdivision Filing No. 2, providing each well pumps no more than 1.001 acre-feet per year.

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

7. Basis. The County Attorney's Office reviewed the following documents in preparing this review: a Water Resources Report dated August 27, 2026, the Water Supply Information Summary, the State Engineer's Office Opinion dated June 23, 2026, and Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan. 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 all requirements of the Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan, specifically, that water withdrawn from the Denver aquifer shall not exceed 1.001 acre-feet per year for 300 years. Depletions during pumping shall be replaced by individual on-lot non-evaporative septic systems.

B. The County prefers that when there is an 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 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 Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan, including the limitations on diversions and use of water for each well and lot, the requirement to meter and record all well pumping, and information on how records are to be recorded.

Covenants shall address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 900.9 acre-feet of not-nontributary Denver aquifer water pursuant to Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan to satisfy El Paso County's 300-year water supply requirement for the two (2) lots and three (3) wells of AFT Ranch Subdivision Filing No. 2. The Covenants shall further identify that 300.3 acre-feet of Denver aquifer water is allocated to Lot 1B and 600.6 acre-feet is allocated to Lot 1A. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply. Applicants must reserve 678 acre-feet of Laramie-Fox Hills aquifer water for post pumping obligations related to the three (3) wells in this subdivision.

2) Advise of responsibility for costs. The Covenants shall advise the lot owners and their successors and assigns of their obligations regarding the costs of operating the plans for replacement, which include pumping of the Denver wells in a manner to replace depletions during pumping.

3) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use a non-evaporative septic system to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping and shall state that said return flows shall not be separately sold, traded, assigned, or used for any other purpose. The Covenants more specifically shall require that at least one well must be serving an occupied single-family dwelling that is generating return flows. 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) 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, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan 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."

5) Advise of monitoring requirements. The Covenants shall advise the 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 existing and future wells in the Denver and Laramie-Fox Hills aquifers.

6) 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 AFT Ranch Subdivision Filing No. 2 pursuant to Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan. Further, written approval of any such 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 the Colorado Ground Water Commission 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 determination."

7) 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 Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan are also terminated by the Colorado Ground Water Commission 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 successors and assigns shall reserve in any deeds of the Property Denver aquifer water in the decreed amount of 600.6 acre-feet for Lot 1A and 300.3 acre-feet for Lot 1B. Said reservations 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. Each lot must reserve 226 acre-feet of Laramie-Fox Hills aquifer water for post pumping obligations.

E. Applicant and its successors and assigns shall convey by recorded warranty deed these reserved Denver 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 Denver and Laramie-Fox Hills aquifers underlying the respective lots to satisfy El Paso County's 300-year water supply requirement and the augmentation plan.

Any and all conveyance instruments shall also recite as follows:

For the water rights and return flows conveyed): "These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year water supply, and replacement during and after pumping, for each of the lots of the AFT Ranch Subdivision Filing No. 2. 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."

F. Applicant and its successors and assigns shall submit a Declaration of Covenants, Conditions, and Restrictions, 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 Declaration shall cross-reference Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan and shall identify the obligations of the individual lot owners thereunder.

G. Applicant and its successors and assigns shall record all applicable documents, including but not limited to Findings of Fact, Conclusions of Law, Judgment and Decree in Division 2 Case No. 2013CW2 and Augmentation Plan, 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.

H. Applications for well permits submitted by persons other than the Applicant must include evidence that the permittee has acquired the right to the portion of the water being requested.

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. Applicant 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."

J. If Applicant plans to use the wells under permit numbers 79187-F, 80236-F and 82423-F, proof shall be provided that the well has been repermited pursuant to the Augmentation plan.

cc: Joe Letke, Project Manager, Planner