

EL PASO COUNTY



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MS-17-005 Grant Minor Subdivision

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FINDINGS AND CONCLUSIONS:

1. This is a proposal by Clive and Karen Grant ("Applicant") for a 2-lot minor subdivision on an existing parcel of approximately 41 acres (the "Property"). The Applicant desires to subdivide the property into 2 lots: Lot 1 with a size of 11 acres which contains an existing single-family residence; and Lot 2, with a size of approximately 30 acres. The property is currently zoned RR-5 (Residential Rural).

2. The Applicant has provided for the source of water to derive from individual on-lot wells, as provided through the Decree in Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1) ("Decree"). An existing well (now with Well Permit No. 81317-F for a nonexempt well issued on September 7, 2017, which replaced Permit No. 69076, a permit for the previously exempt well) will continue to serve Lot 1 of the new minor subdivision and an additional well will be drilled for Lot 2. Pursuant to the Water Supply Information Summary and the analysis provided by Petrock & Fendel, P.C., on September 8, 2017, the source of the water supply will derive from the Dawson aquifer, operating pursuant to the augmentation plan noted in the Decree. Applicant estimates the annual water needs to serve the property at 1.0 acre-feet per year for each of the lots, to include 0.35 acre-feet for in-house demand, 0.6 acre-feet for irrigation, and 0.05 acre-feet for stock watering of up to 4 large domestic animals. Based on Applicant's total demand of 2.0 acre-feet per year for the minor subdivision, Applicant must be able to provide a supply of 600 acre-feet of water (2.0 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

3. In a letter dated November 20, 2017, the State Engineer reviewed the submittal to plat the approximately 41 acre parcel into a 2-lot minor subdivision. The State Engineer reviewed the Water Supply Information Summary, the Decree, and existing Well Permit No. 81317-F. The Engineer stated that the "water is to be provided by on-lot wells

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producing from the Dawson aquifer that will operate pursuant to the augmentation plan decreed by the Division 2 Water Court in case no. 2016CW3066. This case adjudicated water in the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers underlying the 41 acres of land which make up the entire proposed Grant Minor Subdivision.” The amounts identified by the State Engineer (for 300 years) are identified as follows:

| Aquifer | Volume (AF) | Annual Allocation 300 Year (AF/Year) |
|-------------------------------|--------------------|---|
| Dawson (NNT) | 600 | 2.0 |
| Denver (NNT4%) | 1,496 | 5.0 |
| Arapahoe (NNT) | 1,632 | 5.4 |
| Laramie-Fox Hills (NT) | 1,110 | 3.7 |

The State Engineer notes that the Decree allows for diversion of 2.0 acre-foot annually from the not non-tributary Dawson aquifer for a maximum of 300 years. The State Engineer further states that “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(2) 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.”

The State Engineer states that the existing well located on the property may continue to operate under the existing Well Permit No. 81317-F.

4. Analysis. Applicant’s total water demand for the Grant Minor Subdivision is 2.0 acre-feet/year. Pursuant to the Decree, the total estimated demand for the subdivision is 2.0 acre-feet/year. The Decree determined that there is an available water supply from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers. The Decree permits withdrawal of 2.0 acre-feet/year of withdrawal from the Dawson aquifer for 300 years which is adequate to meet the demand of the subdivision. Based on the permitted withdrawal of 2.0 acre-feet annually for 300 years for a total of 600 acre-feet, and an annual water demand of 2.0 acre-feet/year, there appears to be a sufficient water supply to meet the water demands of the Grant Minor Subdivision utilizing the Dawson aquifer water supply. Applicant also adjudicated the water rights for the Denver and Arapahoe Aquifers that could be used if a separate augmentation plan and decree were obtained.

Applicant will also need to provide appropriate amounts of water to meet the replacement requirements in the Decree. Pursuant to the Decree, during pumping of the Dawson aquifer water, Applicant must replace actual depletions to the affected stream system utilizing non-evaporative septic system return flows. The Decree also requires post-pumping depletion augmentation and requires that the Applicant reserve 6.12 acre-feet per year (612 acre-feet total) of the nontributary Laramie-Fox Hills Aquifer groundwater for replacement of post-pumping depletions.

5. 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.

6. Therefore, based on the finding of sufficiency and no injury by the State Engineer pursuant to their review of Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1) and pursuant to 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. Applicant, its successors and assigns, shall comply with all requirements of Well Permit No. 81317-F, specifically, that the annual amount of ground water to be withdrawn for Lot 1 shall not exceed 1.0 acre-feet.
- B. The second well to be constructed on Lot 2, as well as the well on Lot 1, shall comply with all requirements of the State Engineer and C.R.S. 37-90-137(2), as well as Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1).
- C. The County prefers that when there is a plan for replacement, 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 Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1) and their obligations to comply with the same. The Decree specifically requires that the water allocation be limited to the following beneficial uses: "domestic, commercial, irrigation, livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property." Said Covenants or deed restrictions shall also ensure 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 sold, traded, or assigned in whole or in part for any other purpose. **The Covenants or deed restrictions 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.** Such Covenants or deed restrictions shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the Decree.

- D. The Decree requires a potential reduction in pumping beginning in year 197 of operation of the plan for augmentation in order to be able to have return flows from non-evaporative septic systems and irrigation continue to meet the requirements for replacing depletions during the 300 years of pumping the Dawson Aquifer. The Court determined that the return flows generated from in-house use in for two single-family dwellings and returned through non-evaporative septic systems "will adequately replace annual depletions from pumping of 2.0 acre-feet per year of the Dawson aquifer through year 196." Beginning in year 197, if Applicants, their successors and assigns, desire to continue to pump the full 2.0 acre-feet annually, they shall be required to install separate measuring systems for water pumped and used for irrigation purposes and shall prove to the Division Engineer or Water Commissioner that such return flows are adequate to replace annual depletions. If such cannot be proven, then pumping of the Dawson Aquifer shall be reduced to 0.7 acre-feet per well or 1.4 acre-feet total for the two lots.
- E. Applicant, its successors and assigns, shall reserve in the Covenants or deed restrictions and in any deeds of the Property the decreed amount of at least 1.0 acre-feet per lot annually for a total decreed amount of at least 300 acre-feet of Dawson aquifer water for each lot for a 300 year supply for a total of 600 acre-feet for the 2 lots 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 deed restrictions 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.
- F. Applicants shall assign or convey to the individual lot owners, Applicant's interests, rights, and obligations in Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1) including the replacement requirements and shall create either restrictive covenants or deed restrictions upon and running with the property which shall advise and obligate future lot owner(s) of this filing, their successors and assigns, regarding all applicable requirements of Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1), as well as their obligations to comply with the replacement requirements ensuring that replacements are made to the appropriate stream system and that annual relinquishments are made. Such assignment or conveyance shall be accomplished by an appropriate agreement and assignment or conveyance instrument 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. Given the replacement requirement of the augmentation plan in Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1), Applicant, its successors and assigns, shall reserve in the Covenants or the deed restrictions a supply of at least 6.12 acre-feet per year, and up to at least 612 acre-feet total, of Laramie-Fox Hills aquifer water for replacing post-pumping depletions. Applicant, its successors and assigns, shall be required to construct and pay for a Laramie-Fox Hills aquifer well at the time replacement of post-pumping depletions commence, pursuant to the Decree. 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 Laramie-Fox Hills aquifer underlying the Property. 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 replacement 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.
- H. Applicant shall submit 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 minor subdivision plat. Said Declaration/deed restrictions shall cross-reference Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1) and shall recite the obligations of the individual lot owners under each of these documents.
- I. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, Consolidated Case Nos. 2016CW3066 (District Court Water Division 2) and 2016CW3128 (District Court Water Division 1), agreements, assignments, and warranty deeds regarding the water rights, and Declaration of Covenants (if applicable) in the land records of the Office of the Clerk and Recorder of El Paso County, Colorado.
- J. 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 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: Raimere Fitzpatrick, Project Manager, Planner II