

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY
CIVIL DIVISION

First Assistant County Attorney
Diana K. May

Amy R. Folsom, County Attorney

Assistant County Attorneys
M. Cole Emmons
Lori L. Seago
Kenneth R. Hodges
Lisa A. Kirkman
Steven A. Klaffky
Peter A. Lichtman

July 11, 2018

MS-18-002 Hudson Minor Subdivision

Reviewed by: Lori Seago, Senior Assistant County Attorney 
Edi Anderson, Paralegal

FINDINGS AND CONCLUSIONS:

1. This is a proposal by Gregory Joseph Hudson, Sheri Lynne Hudson, Jonathan Ronald Hudson, and Marcy Lyn Hudson ("Applicant") for a 4-lot minor subdivision on a parcel of approximately 38 acres of land (the "Property"). There is currently an existing residence on the Property. A second residence is being constructed and there will eventually be 4 residences on the Property. The parcel is currently zoned RR-5 (Rural Residential).

2. The Applicant has provided for the source of water to derive from individual on-lot wells as decreed in District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) ("Decree"). An existing well (Well Permit No. 81832-F) is located on the Property. Pursuant to the Water Supply Information Summary, 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 0.815 acre-feet per year for each of the lots (3.26 acre-feet/total), to include 0.26 acre-feet for in-house demand, 0.45 acre-feet for irrigation, and 0.247 acre-feet for stock watering of 2 large domestic animals, and 0.08 acre-feet for other uses. Based on Applicant's total demand of 3.26 acre-feet per year for the minor subdivision, Applicant must be able to provide a supply of 978 acre-feet of water (3.26 acre-feet per year x 300 years) to meet the County's 300 year water supply requirement.

3. In a letter dated March 29, 2018, the State Engineer reviewed the submittal to plat the approximately 38 acre parcel into a 4-lot minor subdivision. The State Engineer reviewed the Water Supply Information Summary, the Decree, and existing Well Permit No. 81832-F. The Engineer stated that the "water source is individual on-lot wells

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

constructed in the Dawson aquifer operating pursuant to the decreed augmentation plan in consolidated case nos. 2016CW3180 (Division 1) and 2016CW3090 (Division 2).” The amounts of water decreed as identified by the State Engineer are summarized as follows:

Aquifer	Annual Allocation 100 Year (AF/Year)	Annual Allocation 300 Year (AF/Year)
Dawson	35	11.7
Denver	27.5	9.2
Arapahoe	17.5	5.8
Laramie-Fox Hills	11.4	3.8

The State Engineer notes that the Decree “allows for the annual withdrawal of 4.89 acre-feet from the not non-tributary Dawson aquifer for up to six individual on lot wells, based on a 300 year allocation approach. The augmentation plan states the ground water allocation for each residential lot is 0.815 acre-feet per year for 300 years, which will be used for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools and decorative uses such as decorative ponds and fountains and augmentation through septic system return flows.”¹ The State Engineer further states that pursuant to C.R.S. § 30-28-136(1)(h)(I) and (II), “the proposed water supply is adequate and can be provided without causing injury to decreed water rights.”

The State Engineer also notes that there is an existing well located on the Property, which is identified in the Decree as Well Permit No. 185701 (subsequently known as Permit No. 81832), and pursuant to the decreed augmentation plan may withdraw 0.815 acre-feet of water per year. The State Engineer further notes that Applications for well permits submitted by entities other than the water court Applicants, “must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.”

4. Analysis. Applicant’s total water demand for the Hudson Minor Subdivision is 3.26 acre-feet/year. Pursuant to District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2), there is an available water supply from the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers. The Decree permits withdrawal of 0.815 acre-feet/year for 6 wells from the Dawson aquifer for 300 years for a total water supply of 4.89 acre-feet/year. Based on the permitted withdrawal of 4.89 acre-feet annually for 300 years and an annual water demand of 3.26 acre-feet/year (4 wells at 0.815 acre-feet) there appears to be a sufficient water supply to meet the demands of the Hudson Subdivision utilizing the Dawson aquifer water supply.

¹ Note: The State Engineer’s Office indicated stock watering of up to 8 large domestic animals. 8 animals is the total number permitted in the subdivision, not per each lot. Their analysis of stock watering of 0.099/acre-feet per the subdivision (0.247/lot) is accurate.

Applicant will also need to provide appropriate amounts of water to meet the replacement requirement in the Decree. Pursuant to the Decree, during pumping of the Dawson aquifer water, Applicant will 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 1,332 acre-feet of water from the nontributary Denver aquifer 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 the Hudson Minor Subdivision.

6. Therefore, based on the finding of sufficiency and no injury by the State Engineer pursuant to their review of District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) 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 and its successors and assigns shall comply with all requirements of Well Permit No. 81832-F.
- B. Applications for future well permits submitted by entities other than the water court Applicants must include evidence that the Applicant has acquired the right to the portion of the water being requested on the application.
- C. Pursuant to Section 8.4.7(B)(4)(e)(iii), Land Development Code, when there are 4 or more lots in a subdivision and there is a plan for replacement, the Applicant and its successors and assigns must create a homeowners' association ("HOA"). 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 District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) ("Decree") and their obligations to comply with the same. Pursuant to the Decree, the water on the lots is "expected to be, but shall not be limited to, some or all of the following uses: for indoor uses for drinking and sanitary purposes in the principal houses and in stand-alone home offices or guest cottages, for livestock watering, for landscape and garden irrigation, hot tubs, swimming pools, and decorative uses such as decorative ponds and fountains, and augmentation through septic system return flows." Said Covenants 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. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the Decree.

- D. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property the decreed amount of at least 0.815 acre-feet per lot annually or shall reserve a total decreed amount of at least 244.5 acre-feet of Dawson aquifer water for each lot 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 to 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.
- E. Applicant shall assign or convey to the individual lot owners Applicant's interests, rights, and obligations in the Decree, including the replacement requirement, and shall create restrictive covenants upon and running with the Property which shall advise and obligate future lot owner(s) of this filing and their successors and assigns regarding all applicable requirements of the Decree as well as their obligations to comply with the replacement requirement ensuring that replacement water shall be withdrawn annually and be returned to the uppermost aquifer in the vicinity of the permitted points of withdrawal. 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.
- F. Given the replacement requirement of the augmentation plan in the Decree, Applicant, its successors and assigns, shall reserve in the Covenants a supply of 1,332 acre-feet of water from the Denver aquifer for post-pumping depletion augmentation. Applicants, its successors and assigns, shall be required to construct a Denver aquifer well at the time replacement of post-pumping depletions commences, pursuant to the Decree. Applicant and 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 Denver aquifer underlying the Property to comply with the Decree. Said Covenants or 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 replacement supply for the lots. Applicant shall provide said Covenants or other such reservation and/or conveyance instruments to 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.

- G. Applicant shall submit the 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 must 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 Decree and shall recite the obligations of the individual lot owners under each of these documents.
- H. Applicant, its successors and assigns, shall record all applicable documents, including, but not limited to, District Court Water Division Consolidated Case Nos. 16CW3180 (Division 1) and 16CW3090 (Division 2) 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. 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: Nina Ruiz, Project Manager, Planner II