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SF-24-9 Settlers Ranch Subdivision Filing No. 3

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

Project Description

1. This is a proposal by Hodgen Settlers Ranch LLC (“Applicant”) for subdivision of 24 residential lots on an existing 79.2-acre parcel of land (the “property”). The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary (“WSIS”), the water demand for the subdivision is 13.2 acre-feet/year, comprised of 0.30 acre-feet/year for household use for each of the residential lots totaling 7.2 acre-feet/year, 0.20 acre-feet/year per lot for 3,500 square feet of irrigation for a total of 4.8 acre-feet/year, and 0.05 acre-feet/year per head for stock watering of up to 96 head for a total of 1.2 acre feet/year. Based on this total demand, Applicant must be able to provide a supply of 3,960 acre-feet of water (13.2 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 the not-nontributary Dawson aquifer as provided in Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case

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No. 03CW241 and Division 2 Case No. 03CW50 (“Decree and Augmentation Plan”). The Decree and Augmentation Plan allocates 27,920 acre-feet or 279.2 acre-feet annually of water in the Dawson aquifer to the entire Settlers Ranch development, of which the property is a part, and under the augmentation provisions the allowed average annual amount of groundwater to be withdrawn from the aquifer is limited to 15,180 acre-feet per year. In previous filings of Settlers Ranch (Filings 1, 2A, 2B, and 2C), a total of 11,220 acre-feet in the Dawson aquifer have been reserved for 68 lots, leaving 3,960 acre-feet available for this property. The Decree and Augmentation Plan allows the withdrawal of Dawson aquifer water in the amount of 50.6 acre-feet annually (0.55 acre-feet per lot) for up to 300 years for all of Settlers Ranch.

The allowed annual amount of groundwater to be withdrawn from the aquifer by all wells operating under the Decree and Augmentation Plan shall not exceed 50.6 acre-feet. The allowed annual amount to be withdrawn per well is 0.55 acre-feet for the following beneficial uses: domestic, industrial, commercial, irrigation, livestock watering, recreational, fish and wildlife, fire protection, and for exchange and augmentation purposes.

The approved Decree and Augmentation Plan has a term of 300 years and requires that return flows from in-house use of groundwater shall occur through individual on-lot non-evaporative septic systems to augment depletions to affected stream systems during pumping. Post-pumping depletions shall be augmented by the direct discharge of nontributary groundwater from the Arapahoe and Laramie-Fox Hills aquifer into the affected stream system. The Applicant must thus reserve 6,260 acre-feet in the Arapahoe aquifer and 8,960 acre-feet of the Larmie-Fox Hills aquifer for this purpose. The Applicant is responsible for ensuring that replacement water is provided to the alluvial aquifer as required by the Augmentation Plan. The annual amount of replacement water provided must be no less than the annual replacement requirement on a yearly basis.

State Engineer’s Office Opinion

5. In a letter dated May 9, 2024, the State Engineer reviewed the proposal to subdivide the 79.2 acres into 24 single-family residential lots. The State Engineer stated that “[t]he proposed water source of water is individual on lot wells producing from the nontributary Dawson aquifer that will operate pursuant to the decree and plan for augmentation decreed in Division 1 Water Court case no. 2003CW241 and Division 2 Water Court case no. 2003CW050”. The State Engineer identified the total estimated water requirement at 13.2 acre-feet/year (0.55 acre-feet/year/lot).

The State Engineer stated that “[b]ased upon the above and pursuant to Section 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.”

Recommended Findings

6. Quantity and Dependability. Applicant’s water demand for Settlers Ranch Subdivision Filing No. 3 is 13.2 acre-feet per year from the Dawson aquifer for a total demand of 3,960 acre-feet for the subdivision for 300 years. The Augmentation Plan allows for up to 92

wells (24 wells for this filing; Filing No. 3) limited to an annual withdrawal of 0.55 acre-feet per well.

Based on the water demand of 13.2 acre-feet/year for Settlers Ranch Subdivision Filing No. 3 and the Augmentation Plan permitting withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for Settlers Ranch Subdivision Filing No. 3.

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: a Water Resources Report dated January 2, 2024, the Water Supply Information Summary, the State Engineer Office's Opinion dated May 9, 2024, and Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50. 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, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50, specifically, that water withdrawn from the Dawson aquifer by each of the proposed 24 wells permitted shall not exceed 0.55 annual acre-feet, based on a total combined annual withdrawal of 13.2 acre-feet for this Filing No. 3. Depletions during pumping shall be replaced by individual on-lot non-evaporative septic systems.

B. Applicant must 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.

C. Applicants 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, and the HOA regarding all applicable requirements of Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50, 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 specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 3,960 acre-feet of Dawson aquifer water, 6,260 acre-feet of Arapahoe aquifer water, and 8,960 acre-feet of Laramie-Fox Hills aquifer water to satisfy El Paso County's 300-year water supply requirement for the 24 lots of Settlers Ranch Subdivision Filing No. 3. The Covenants shall further identify that 164.5 acre-feet (0.55 acre-feet/year) of Dawson aquifer water is allocated to each of the 24 lots. Said reservations shall not be separated from transfer of title to the property and shall be used exclusively for primary water supply.

2) Advise of responsibility for costs. The Covenants shall advise the HOA, lot owners and their successors and assigns of their obligations regarding the costs of operating the plans for augmentation, which include pumping of the Dawson wells in a manner to replace depletions during pumping and the cost of drilling Arapahoe and Laramie Fox-Hills aquifers in the future to replace post-pumping depletions.

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 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 the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50 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 HOA, 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, Arapahoe and/or 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 Settlers Ranch Subdivision Filing No. 3 pursuant to Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50. 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 the District Court, Water Divisions 1 and 2, 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.”

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, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50 are also terminated by the Division 1 and 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 successors and assigns shall reserve in any deeds of the property Dawson aquifer water in the decreed amount of 3,960 acre-feet (0.55 acre-feet per year per lot), 6,260 acre-feet of Arapahoe aquifer water and 8,960 acre-feet of Laramie Fox-Hills aquifer water. 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.

E. Applicants and their successors and assigns shall convey by recorded warranty deed the reserved Dawson aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson aquifer underlying the

respective lots to satisfy El Paso County's 300-year water supply requirement, which amount is 165 acre-feet (0.55 acre-feet per year) per lot.

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, replacement during pumping, and replacement of post-pumping depletions for each lot of Settlers Ranch Subdivision Filing No. 3. 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 shall convey, or provide proof of previous conveyance of, 6,260 acre-feet of Arapahoe aquifer water and 8,960 acre-feet of Laramie-Fox Hills aquifer water to the HOA for use in the augmentation plan to replace post-pumping depletions.

G. 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 the Findings of Fact, Conclusions of Law, Ruling of Referee and Decree: Adjudicating Denver Basin Groundwater and Approving Plan for Augmentation in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50 and shall identify the obligations of the individual lot owners thereunder.

H. Applicants and their 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 in Division 1 Case No. 03CW241 and Division 2 Case No. 03CW50, 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. 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.

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. 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.”

cc: Kari Parsons, Project Manager, Planner