



August 10, 2020

Pam Cherry
Morgan County Planning and Building Department
Transmission via email: pcherry@co.morgan.co.us

Re: Deganhart Minor Subdivision #2
Pt. S ½ of Section 34, T5N, R59W, 6th P.M.
Water Division 1, Water District 1

Dear Ms. Cherry:

We have reviewed the above referenced proposal to subdivide a parcel of approximately 115.48 acres into two lots. This office previously provided comments regarding this proposal on July 20, 2020, based on the premise that the referenced proposal was for a “one-lot” subdivision. This letter is a re-evaluation of the proposal as a two-lot subdivision. Lot 1 will be 112.83 acres and currently contains a single-family dwelling and outbuildings. Lot 1 will continue to be used for agricultural purposes. Lot 2 will be 2.65 acres and is proposed to be used for residential purposes.

Water Supply Demand

The estimated water requirements for this subdivision were not provided.

Source of Water Supply

According to a document included in the application materials from the Northeast Colorado Health Department dated May 28, 2020, Lot 1 is currently served by the Morgan County Quality Water District (“MCQWD”) through an existing tap. The proposed source of water for Lot 2 was identified as the MCQWD. The application included a Tap Request to the MCQWD for one ¾” tap prepared by NOCO Engineering Company and dated June 8, 2020. The subject property is located within the water service area of the MCQWD. According to information provided by the MCQWD in a letter dated December 19, 2007, the District’s commitments at that time totaled 3,572 tap equivalents, or 2,500.4 acre-feet per year, and their firm water supplies totaled 6,104 tap equivalents, or 4,273 acre-feet per year.

Based on records available to this office, there are two existing domestic wells within proposed Lot 1. Well permit no. 34309 was issued on June 24, 1968 and was constructed on June 26, 1968. Well permit no. 47443 was issued on July 16, 1971 and constructed on July 18, 1971.

Section 37-92-602(3)(b)(III), C.R.S., requires that the cumulative effect of all wells in a subdivision be considered when evaluating material injury to decreed water rights. With the adoption of Senate Bill 20-0155 on July 2, 2020, section 37-92-602(3) was amended to allow an existing exempt well permitted pursuant to section 37-92-602(3)(b)(II)(A) and constructed at the



time of the final approval of a land division to retain its presumption of noninjury after the land on which the well is located has been divided. Any well, proposed or existing, in an over-appropriated basin and in a tributary source that does not meet the requirements outlined in section 37-92-602(3)(b)(IV) shall be presumed to cause injury if it will be located in a post-June 1, 1972 subdivision.

Permit nos. 34309 and 47443 were not issued pursuant to section 37-92-602(3)(b)(II)(A) and therefore would be presumed to cause injury if they were to be located in a post-June 1, 1972 subdivision. However, because the subject property is greater than 35 acres in size, this office may be able to issue a new permit for **one (1)** of the two wells pursuant to section 37-92-602(3)(b)(II)(A) prior to final approval of the subdivision being granted, that would allow the use of the well for fire protection, ordinary household purposes inside not more than three single-family dwellings, the watering of poultry, domestic animals and livestock on a farm or ranch, and the irrigation of not more than one acre of home gardens and lawns. Upon approval of the subdivision, the provisions of section 37-92-602(3)(b)(IV) would require the re-permitted well to be the only well serving Lot 1. Our office therefore recommends that if the applicants wish to retain use of one of the wells, that well be re-permitted as the only exempt well on all 112.83 acres of proposed Lot 1, which would require the second well to either be plugged and abandoned or be included in a decreed augmentation plan. Because the subject property is located within the boundaries of the MCQWD, the application to re-permit the well would need to be accompanied by a letter from the water district stating that they do not object to the issuance of a well permit for the subject property.

If the applicant is unable or unwilling to re-permit one of the existing wells pursuant to section 37-92-602(3)(b)(II)(A), then both of the existing wells must either be included in a decreed augmentation plan, or must be plugged and abandoned since the provisions of section 37-92-602 which allowed for the issuance of the exempt well permits will no longer apply.

According to our records there are two non-exempt wells that are decreed to supply water for irrigation on the property, well permit nos. 13092-R and 5995-F. The wells were decreed in Water Court case no. W-4003 for the irrigation of 121 acres in Section 34, Township 5 North, Range 59 West of the 6th P.M. The water right for the subject wells is included on the 2020 Abandonment List. Both wells have been tagged and are under orders not to pump. Neither of the irrigation wells are included in an augmentation plan and must remain inactive until they are included in a substitute water supply plan approved by this office or a plan for augmentation decreed by the water court and until they meet the measurement rules. The proposed subdivision does not change the status of the wells with permit nos. 13092-R and 5995-F or the decreed water right.

State Engineer's Office Opinion

Based on the above, the State Engineer finds, pursuant to section 30-28-136(1)(h)(I), C.R.S., that material injury will occur to decreed water rights unless one of the two existing domestic wells is either re-permitted pursuant to section 37-92-602(3)(b)(II)(A), re-permitted as a non-exempt well pursuant to a court-approved augmentation plan, or plugged and abandoned, and the second is either re-permitted as a non-exempt well pursuant to a court-approved augmentation plan or plugged and abandoned.

Should you or the applicants have any questions regarding this matter, please contact Javier Vargas-Johnson of this office via email at javier.vargasjohnson@state.co.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Brucker".

Sarah Brucker, P.E.
Water Resources Engineer

Cc: Owner (Kimberlee Deganhart, kdeganhart@weldonvalley.org)
Applicant (Lindsey Deganhart, ljdhart@gmail.com)
Well permit file nos. 34309, 47443, 13092-R, and 5995-F
Referral file no. 27210