

# EL PASO COUNTY



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May 24, 2022

MS-20-5 Mose Minor Subdivision

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## WATER SUPPLY REVIEW AND RECOMMENDATIONS

### Project Description

1. This is a proposal by Gilbert Mose, Jr. and Jeanette Mose ("Applicant") for a 2-lot minor subdivision on a parcel of 6.12 acres of land (the "Property"). Lot 1 is estimated at 3.12 acres; Lot 2 is estimated at 3.00 acres. The Property is currently zoned RR-5 (Rural Residential) and A-5 (Agricultural); however, there is a concurrent request to rezone the Property to RR-2.5 (Rural Residential).

### Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the water demand is 0.92 acre-feet/year for the subdivision, which includes 0.60 acre-feet for household use, "up to" 0.22 acre-feet for irrigation, and "up to" 0.10 acre-feet for stock watering (0.46 acre-feet/lot/year). Based on this demand, Applicant must be able to provide a supply of 276 acre-feet of water (0.92 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 individual on-lot wells as provided in the determination and replacement plan identified as Colorado Ground Water Commission Findings and Order 573-BD. The Determination was issued on August 25, 2004 and provided for an average annual amount of withdrawal of groundwater of 26.5 acre-feet from the Dawson aquifer from the north tract of 60.17 acres and 4.2 acre-feet from the south tract of 9.55 acres, both from the Dawson aquifer (for a period of 100 years) to be used on the 69.72-acre property. A Replacement Plan for Water Right 573-BD ("Replacement Plan") was issued on June 27, 2007, permitting withdrawal of 0.46 acre-feet of ground water from each of five wells in the Dawson aquifer.

The Determination and Replacement Plan were issued to RMBG, LLC #2 and the Pikes Peak Range Riders Foundation. The water rights were transferred to the Applicant via a Quitclaim Deed, Assignment and Assumption on November 5, 2019 and as recorded on November 15, 2019 at Reception No. 219144395 in the records of the El Paso County Clerk and Recorder.

4. The Applicant provided a *Water Supply Report* for the Mose Minor Subdivision dated September 28, 2021, by GroundWater Investigations, LLC (GWI). The *Report* notes that Replacement Plan 573-BD includes an annual amount of 2.3 acre-feet of water to serve a 5-lot subdivision at 0.46 acre-feet/lot for a period of 300 years. The actual project consists of 2 of the 5 proposed lots at 0.46 acre-feet/year, to include 0.30 acre-feet for in-home use, 1,600 square-feet of lawn and garden and up to 4 large animals. The *Report* states that the “water supply is sufficient to meet the County’s requirement for two homes in terms of Quality, Quantity, and Dependability.”

#### State Engineer’s Office Opinion

5. In a letter dated December 17, 2020, the State Engineer reviewed the submittal to plat the 6.12-acre parcel into a 2-lot minor subdivision. The State Engineer stated that the “source of water supply is individual on-lot wells producing from the not-nontributary Dawson Aquifer that would be permitted pursuant to the replacement plan for Determination of Water Right no. 573-BD.” The State Engineer further states that “Determination of Water Right no. 573-BD allows for the withdrawal of 2.3 acre-feet per year of ground water from the Dawson aquifer for 300 years through individual wells to be located on 5 residential lots on the 9.5 acres of the South Tract and a portion of the North Tract, of which the subject 6.12 acres is a part. Each well may withdraw 0.46 acre-feet per year of ground water to be used for in-house use, the irrigation of 1,600 square feet of lawn and gardens and the watering of up to four large domestic animals. These allowed uses are consistent with the proposed uses specified in the Water Supply Report for the two lots of the minor subdivision.”

The State Engineer further stated that the “allowed average annual amount of withdrawal of 2.76 acre-feet/year of Determination of Water Right no. 573-BD would be reduced to one third of that amount, or 0.92 acre-feet/year.” Finally, the State Engineer provided their opinion that “pursuant to Sections 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 water rights.”

#### Recommended Findings

6. Quantity and Dependability. Applicant’s water demand for the Mose Minor Subdivision is 0.92 acre-feet per year for a total demand of 276 acre-feet for the subdivision for 300 years. Determination and Replacement Plan No. 573-BD permits withdrawal of 0.92 acre-feet/year (276 acre-feet total) of Dawson aquifer water for a period of 300 years. Based on the demand of 0.92 acre-feet/year for the 2-lot subdivision and the Replacement Plan permitting withdrawals in that amount for a period of 300 years, there appears to be a sufficient water supply to meet the water demands of the Mose Minor Subdivision.

**Based on the water demand of 0.92 acre-feet/year for the Mose Minor Subdivision and the Determination and Replacement Plan permitting withdrawals in that amount, the County Attorney's Office recommends a finding of sufficient water quantity and dependability for the Mose Minor Subdivision.**

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: the Colorado Ground Water Commission Determination 573-BD dated August 25, 2004, Replacement Plan 573-BD dated June 27, 2007, the Water Supply Information Summary provided March 22, 2021, the *Water Supply Report* dated September 28, 2021, and the State Engineer Office's Opinion dated December 17, 2020. 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 Determination and Replacement Plan 573-BD; specifically, that water use shall not exceed 0.92 acre-feet annually for the 2-lot subdivision and that all stream depletions will be replaced with non-evaporative septic system return flows for a period of 300 years pursuant to the Commission's replacement plan.

B. Determination and Replacement Plan 573-BD require that Applicant create a homeowners' association ("HOA") to administer the replacement plan and to establish restrictive covenants upon and running with the property. The Covenants shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of Determination and Replacement Plan 573-BD, including, but not limited to, ensuring 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 separately sold, traded, or assigned in whole or in part for any other purpose. The Covenants more specifically shall require that each lot served by the Dawson aquifer well will have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system. In addition, the Covenants shall advise future lot owners of this subdivision and their successors and assigns of their obligations regarding costs of operating the plan for replacement, including all monitoring and accounting. Such Covenants shall also address responsibility for any metering and data collecting that may be required regarding water withdrawals from wells pursuant to the plan for replacement, and shall protect the viability of the water supply by placing limitations in the Covenants as to amendments and termination as applied to said water supply.

The Covenants shall address the following:

- 1) Identify the water rights associated with the property. The Covenants shall reserve 138 acre-feet per lot of not nontributary Dawson aquifer water pursuant to Replacement Plan No. 573-BD to satisfy El Paso County's 300-year water supply requirement for each lot of the Mose Minor Subdivision.
- 2) Require non-evaporative septic systems and reserve return flows from the same. The Covenants shall require each lot owner to use non-evaporative septic systems to ensure that return flows from such systems are made to the stream system to replace actual depletions during pumping, shall reserve said return flows to replace 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 each lot served by a Dawson well have an occupied single-family dwelling that is generating return flows from a non-evaporative septic system. 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."
- 3) 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 plan for replacement in Determination and Replacement Plan 573-BD 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."
- 4) The Covenants shall advise future lot owners of this subdivision or their successors and assigns of their responsibility for any metering and data collecting that may be required regarding water withdrawals from wells in the Dawson aquifer.
- 5) The Covenants shall advise future lot owners and their successors and assigns of their responsibility to construct septic systems in compliance with the State of Colorado and El Paso County Public Health standards and which shall not cause unreasonable impairment of water quality of the receiving aquifer.

6) The Covenants shall require that well permits be obtained pursuant to the requirements of Determination 573-BD and approval by the Colorado Ground Water Commission.

7) 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 Mose Minor Subdivision pursuant to Determination and Replacement Plan 573-BD. 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 a Determination from 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 adjudication.”

8) The Covenants shall address termination using the following or similar language:

“These Covenants shall not terminate unless the requirements of Determination and Replacement Plan 573-BD 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.”

C. Applicant and its successors and assigns shall reserve in the Covenants and in any deeds of the Property the determined amount of 0.92 acre-feet annually for the subdivision from the Dawson aquifer for a period of 300 years for a total of 276 acre-feet for the 2-lot subdivision. 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 the reserved Dawson aquifer water rights to the individual lot owners. Applicant shall provide copies of said Covenants 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.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the Dawson aquifer: “These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, and replacement during pumping, for each of the 2 lots of the Mose Minor Subdivision. 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.”

D. Pursuant to Determination and Replacement Plan 573-BD, Applicant shall recite that this water shall not be separated from transfer of title to the Property. Applicant shall provide copies of 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.

E. Applicant and its successors and assigns shall at the time of lot sales, convey by warranty deed to individual lot owners sufficient water rights in the Dawson aquifer, pursuant to Determination and Replacement Plan 573-BD, underlying the respective lots to satisfy El Paso County’s 300-year water supply requirement. Dawson aquifer requirements are 0.46 acre-feet per lot x 300 years (138 acre-feet total). Said 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 primary supply and replacement during pumping for the respective lots. Applicant shall provide form deeds for such conveyances 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. Applicant and its successors and assigns shall submit proposed Declaration of Covenants 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 Determination and Replacement Plan 573-BD 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, the Determination and Replacement Plan 573-BD and 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. 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 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, Senior Planner