

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

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November 5, 2020

VR-20-4 Mountain States Pipe and Supply Replat  
Vacation and Replat

Reviewed by: Lori L. Seago, Senior Assistant County Attorney  
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### **FINDINGS AND CONCLUSIONS:**

1. This is a vacation and replat proposal by Mountain States Pipe and Supply ("Applicant") to plat a 2-lot subdivision on 4.48 acres of land. The Applicant states that the property will be utilized for mini storage. The property is zoned M (Industrial).

2. The Applicant has provided for the source of water to derive from the Cherokee Metropolitan District ("District"). Pursuant to the Water Supply Information Summary ("WSIS"), the annual water demand for the development is 0.31 acre-feet per year, which equates to 0.10 acre-feet for commercial use and 0.21 acre-feet for irrigation. Based on Applicant's figures, the Applicant must be able to provide a supply from the District of 93 acre-feet of water (0.31 acre-feet per year x 300 years) to meet the County's 300-year water supply requirement.

3. The General Manager of the District provided a formal commitment letter dated January 13, 2020, committing to provide water service for the 2 lots which they identify as Electronic Dr. Self-Storage, which is located within the District's boundaries. The General Manager stated that the "District staff, along with the developer, have determined that 0.31 acre-feet per year will be sufficient for this development." The General Manager notes that this is a conditional commitment, stating that "you must provide the District with a copy of the final plat approval from El Paso County Development Services within 12 months of the date of this letter. Otherwise, the District may use this allocation for other developments requesting a water commitment."

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4. The District also provided a *Water Provider's Report* dated October 23, 2020. The *Report* detailed the District's water commitments and water availability, stating that with "4,443.0 AFY of exportable supply and 4,033 AFY of commitments, CMD has a water balance of 410.0 AFY before the subject development. After commitment of 0.31 AFY to this development, the District will have 410.7 AFT remaining for additional commitments."

5. In a letter dated October 7, 2020, the State Engineer reviewed the application to subdivide 4.48 +/- acres into 2 lots. The State Engineer details that Lot 1 will be 2.208 +/- acres and Lot 2 will be 2.252 +/- acres. The State Engineer describes the water demand as follows:

Type	Area	Water Use Rate (AF/thousand square foot)	Water Demand (AF/year)
Commercial	19,392 square-feet	0.005	0.10
Irrigation	1.2 acres	0.004	0.21
<b>Total</b>			<b>0.31</b>

The State Engineer confirmed that the Cherokee Metropolitan District has committed a water supply of 0.31 acre-feet/year in their letter dated January 13, 2020 and that the WSIS proposes a water demand for the development at 0.31 acre-feet/year. Further, the State Engineer states that "[a]ccording to the records of this office, Cherokee has sufficient water resources to supply this development as described above."

Finally, the State Engineer declared that "[p]ursuant to Section 30-28-136(1)(h)(II), C.R.S., it is the opinion of this office that the proposed water supply can be provided without causing injury to decreed water rights, and the supply is expected to be adequate."

6. Section 8.4.7(B)(10)(g) of the El Paso County Land Development Code allows for a presumption of water quality when water is supplied from an existing Community Water Supply, which operates in conformance with the Colorado Primary Drinking Water Regulations and the CDPHE requirements, as clarified by El Paso County Public Health, and is determined to meet the required water quality standards.

7. Analysis: As indicated above, this review is based on a water demand of 0.31 acre-feet/year, which the District has committed to serve. The State Engineer determined that Cherokee Metropolitan District appears to have adequate water resources to serve the estimated demand of 0.31 acre-feet/year for the proposed development.

8. Therefore, based upon the finding of sufficiency and no injury to existing water rights by the State Engineer, a water demand of 0.31 acre-feet/year and a commitment from the District in the amount of 0.31 acre-feet/year for a period of 300 years, but given

the conditional nature of the commitment to serve by the District, and subject to the conditions set forth below, the County Attorney's Office recommends a finding of **conditional sufficiency** as to water quantity and dependability for Mountain States Pipe and Supply commercial development.

**CONDITIONS OF COMPLIANCE:**

A. Applicant and all future owners of lots within this filing shall be advised of, and comply with, the conditions, rules, regulations, and specifications set by the District.

B. Applicant must obtain final plat approval and provide evidence thereof to the District within 12 months of the District's commitment letter dated January 13, 2020 (approval must be provided by January 13, 2021), to retain the District's water commitment. **If Applicant fails to do so, this recommended finding of conditional sufficiency will be deemed void and no longer valid. Once Applicant provides proof to the District that satisfies the District's condition of final plat approval, this conditional finding of sufficiency will automatically convert to a full sufficiency finding.**

C. Prior to recording the first final plat, Applicant must obtain an updated commitment letter from the District correctly identifying the subject project as Mountain States Pipe and Supply Replat. The updated letter shall be uploaded into eDARP in File No. VR-20-4.

cc: Rad Dickson, Project Manager