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Re: Mayberry Phase 1 PUD/SP

Dear Mr. Howser,

This firm represents the Upper Black Squirrel Creek Ground Water Management District (“the District”). Applicant, N.E.S., Inc., on behalf of Mayberry Communities LLC (“Mayberry”), provided materials in support of their Application for an amendment to its preliminary plan for 240 single-family residential lots, 3 industrial lots, and open space tracts on 71.39-acres located in part of the NE ¼ NE ¼ of Sec. 15 and part of the N ½ N ½ of Sec. 14, T14S, R63W, 6th P.M. off of State Highway 94 (“Application”). This proposed development is located within the District. The District reviewed the Applicant’s Application materials and submits the following comments:

Proof of Dedicated Water Supply-No Evidence of Tipton Well Ownership or Right to Use Tipton Water Rights

The development relies on a water supply commitment from Ellicott Utilities Co., which sources its water supply from Laramie-Fox Hills determination 598-BD and from an interest in the Tipton Well owned by Cherokee Water LLC. Cherokee Metropolitan District is the manager of Cherokee Water LLC and manages the Tipton Well. According to Applicant’s Water Resources Report, Ellicott Utilities Co. has an 82 acre-feet/year interest in the Tipton Well, of which 30.96

acre-feet/year is allocated to this development. Applicant claims that the 82 acre-feet/year available to the Company is part of the 225 acre-feet/year of exportable groundwater associated with the Tipton Well (permit no. 16253-RFP-R) adjudicated in Colorado Ground Water Commission Case No. 91GW01.

Ellicott Utilities Co. claims its interest in the Tipton Well through two Purchase and Sales Agreements: one with the Marksheffel Business Center LLC and the other with P.B. Patel and Savitaben P. Patel (“Sellers”). *See Water Resources Report* at 101, 136. There are two issues associated with the ownership documentation Applicant has provided. First, Sellers’ documentation does not clearly establish an ownership interest or right to use the Tipton Well they claim. Applicant must provide additional evidence clearly outlining the derivation of Ellicott Utilities Co.’s interest in the Tipton Well and proportionate interest owned or contractually committed to other entities. Additionally, these Purchase and Sales Agreements only establish a contractual commitment to obtain an interest in the Tipton Well; they do not establish Ellicott Utilities Co.’s current contractual or ownership interest in the Tipton Well. Applicant must provide evidence of the current ownership and right to use a proportionate share in the Tipton Well.

Mayberry Has No Legal Right to Change Cherokee Metropolitan District Water Rights or Claim a Future Right to Cherokee Metropolitan District Well 1-8 Water Rights

Confusingly, Applicant also apparently claims that a portion of its water supply will be fulfilled through changing the “excess” water rights of Cherokee Metro District Well Nos. 1-8 currently committed to other subdivisions. *See Water Resources Report* at 6, 75-86. Pursuant to the order entered in Case No. 15GW15, Cherokee Metropolitan District committed its water rights from its Cherokee Well Nos. 1-8 to serve Viewpoint Estates/Antelope Park Estates in the amount of 50 AF/YR and Sunset Village in the amount of 60 AF/YR. *Id.* at 82. It is these allotments that Applicant apparently claims can be changed to supply the Mayberry subdivision. *Id.* at 6. This claim raises several issues. First, Applicant has no authority to reduce these Cherokee Metropolitan District commitments determined in the order entered in Case No. 15GW15. Applicant provides no evidence that Cherokee Metropolitan District has agreed to reduce its commitment to these subdivisions. To the contrary, Cherokee Metropolitan District’s has committed a portion of its water from Cherokee Metropolitan District Well Nos. 1-8 to Viewpoint Estates/Antelope Park Estates and Sunset Village and this water cannot be used at any other location. At the very least, Applicant’s statement that the water provided to Viewpoint/Antelope Park Ranchettes and Sunset Village “derives from existing water commitments held by Ellicott Utilities Company,” *see Water Resources Report* at 4, must be substantiated by the Cherokee Metropolitan District.

Additionally, Applicant acknowledges that “the ability to use this particular water commitment on other properties will have to be accomplished by a change of location pursued jointly by Cherokee Metropolitan District.” *Id.* at 5. Applicant must provide evidence that the Cherokee Metropolitan District has agreed to pursue this change of location.

Overall, Applicant has not provided any evidence that there is a water surplus available from the allocations identified in Case No. 15GW15, and that there is a change case currently pending to relocate those allocations to the Mayberry subdivision. Given that Cherokee

Metropolitan District plays such an integral role in providing Applicant's proposed water supply for the Mayberry subdivision, it is very concerning that the Water Resources Report does not provide any statements from the Cherokee Metropolitan District. Because the District has serious concerns with Applicant's water supply as reported in the Water Resources Report, counsel for the District attempted to locate the author of that report but was unable to find any contact information. The County **should not approve** Applicant's Application unless and until substantially more evidence is provided substantiating and explaining Applicant's proposed water supply.

Wastewater Service

Applicant's proposed wastewater service will be provided by the Ellicott Springs Wastewater Treatment Plant, formerly known as the Sunset Wastewater Treatment Plant. *See Water Resources Report* at 10. It is the District's understanding that this wastewater treatment plant either does not have a currently valid discharge permit from the Colorado Water Quality Control Commission ("WQCC") or is currently noncompliant with water quality standards from Regulation Nos. 41 and 42 of the WQCC. Applicant's Application **should not be approved** unless and until Applicant provides sufficient evidence that its proposed wastewater service provider has a valid discharge permit that is compliant with all regulations from the WQCC.

Additional Comments

The Mayberry subdivision would be located within the District's boundaries and therefore Applicant's proposed water and wastewater service must comply with all of the District's Rules and Regulations. Under Rule 11, all groundwater withdrawals providing Waterbury's water service must be metered and submitted to the District at regular intervals.

The District reserves the right to provide additional comments at a later date based upon information not readily ascertainable from the above-referenced application.

Sincerely,



Mirko L. Kruse
for
TROUT RALEY

cc: UBSCGWMD Board of Directors
Joanna Williams, Water Resources Engineer, Colorado Groundwater Commission
Peter Johnson, Counsel for Cherokee Metropolitan District