



February 3, 2022

Ryan Howser, Project Manager
El Paso County Development Services Department
Transmitted via the EPC EDARP Portal: epcdevplanreview.com

Re: Mayberry Phase 1 PUD/SP (a.k.a. Ellicott Town Center Phase 1 PUD Amendment)
Case No. PUDSP219
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.
Upper Black Squirrel Creek Designated Basin
Water Division 2, Water District 10

Dear Ryan Howser:

We have reviewed additional information submitted on January 21, 2022 in regards to the water supply for Mayberry Phase 1. Based on review of that information we have the following comments on the water supply plan for Mayberry Phase 1 PUD. This letter supersedes our letter dated June 28, 2021 and July 22, 2021.

Mayberry Phase 1 PUD is an amendment to the existing Ellicott Town Center Phase 1 PUD. Therefore this letter supersedes the letters previously written for Ellicott Town Center Filings 1 and 2. The proposed development will consist of 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.

Water Supply Demand

According to the Water Supply Information Summary and “Water Resources and Wastewater Treatment Report” (“Report”) prepared by MMI Water Engineers dated January 12, 2022 (which supersedes the report prepared for the original PUD), the estimated water demand is 62.40 acre-feet/year for household use in 240 units, 11.84 acre-feet/year for the irrigation of 4.81 acres, and 7.70 acre-feet/year for industrial use. The total estimated demand is 81.94 acre-feet/year.

The Applicant should be aware that the proposed household supply (0.26 acre-feet/year per unit) used in estimating the above demand is less than what this office typically views as an adequate household supply. However, the report provides an analysis based on actual water usage data from the Viewpoint Estates/Antelope Park Ranchettes and Sunset Village developments, for which the lot sizes are greater than the lot sizes proposed for this development, and states that this estimated demand is applicable for the Mayberry development. This analysis is valid so long as the existing units within the above developments have comparable water demands to those planned for the Mayberry development.

Source of Water Supply

The proposed water supply source is service provided by Ellicott Utilities Company, LLC (“Company”). According to the letter dated May 14, 2021 and revised June 2, 2021, the Company will provide water and sewer service to the Mayberry Phase 1 development, subject to the Company’s Rules and Regulations. This office has not received information that the Applicant has met these requirements. The service letter supersedes the two prior commitment letters from the Company for Ellicott Town Center Filing Nos. 1 and 2.



The Company has no other water commitments at this time. However the Company's infrastructure is used to deliver 50 acre-feet per year of water controlled by the Cherokee Metropolitan District ("Cherokee") to the Viewpoint Estates/Antelope Park Ranchettes subdivisions.

According to the report, the Company owns and controls water rights associated with Determination of Water Right Nos. 598-BD and 599-BD, an interest in the Tipton Well and the Benton Well. For purposes of this letter only the water associated with Determination of Water Right no. 598-BD and the Tipton Well is considered, since water from Determination of Water Right no. 599-BD and the Benton well are not currently legally available for use.

Determination of Water Right No. 598-BD was issued November 8, 2004 and allows an average annual withdrawal of 161 acre-feet/year for 100 years from the Laramie-Fox Hills aquifer for domestic, irrigation, commercial, industrial, firefighting, and recreational use. The allowed place of use is the 551.26 acres generally described as the W ½ and the W ½ of the NE ¼ of Section 14 and the E ½ of Section 15, all in Township 14 South, Range 63 West of the 6th P.M. Mayberry Phase 1 PUD is within this allowed place of use.

A proposed source of water for this development (Determination no. 598-BD) is a bedrock aquifer allocation from the Denver Basin. The State Engineer's Office does not have evidence regarding the length of time for which the bedrock aquifer sources will be a physically and economically viable source of water. According to 37-90-107(7)(a), C.R.S., "Permits issued pursuant to this subsection (7) shall allow withdrawals on the basis of an aquifer life of 100 years." Based on this allocation approach, the annual amounts of water determined in Determination of Water Right No. 598-BD is equal to one percent of the total amount, as determined by rule 5.3.2.1 of the Designated Basin Rules, 2 CCR 410-1. Therefore, the water may be withdrawn in those annual amounts for a maximum of 100 years.

The *El Paso County Land Development Code*, Section 8.4.7.(B)(7)(b) states:

"(7) Finding of Sufficient Quantity

(b) Required Water Supply. The water supply shall be of sufficient quantity to meet the average annual demand of the proposed subdivision for a period of 300 years."

The State Engineer's Office does not have evidence regarding the length of time for which this source will "meet the average annual demand of the proposed subdivision." However, treating El Paso County's requirement as an allocation approach based on 300 years, the allowed average annual amount of withdrawal of 161 acre-feet/year from the Laramie-Fox Hills aquifer would be reduced to one third of that amount, or 53.67 acre-feet/year. The Company anticipates a 5% transit loss in delivering the water supply, therefore an amount of 50.98 acre-feet/year is available from this source to supply the development.

According to the Report, the Company has an 82 acre-feet/year interest in the Tipton Well. The 82 acre-feet/year that the Company claims a right to is part of 225 acre-feet/year of fully consumable alluvial groundwater associated with the Tipton Well (permit nos. 16253-RFP-R and 27574-FP) adjudicated in Colorado Ground Water Commission Case No. 91GW01 for municipal, commercial and/or industrial use or export outside of the Upper Black Squirrel Creek Designated Ground Water Basin.

Based on review of our records Cherokee Water LLC is claiming ownership of 221 acre-feet/year of the 225 acre-feet/year for purposes of serving Cherokee's water commitments. Additional information must be provided by Cherokee to demonstrate that they are not relying on the 82 acre-feet/year of water claimed by the Company to meet their water commitments.

State Engineer's Office Opinion

Based upon the above and pursuant to section 30-28-136(1)(h)(I), C.R.S. and section 30-28-136(1)(h)(II), C.R.S., it is our opinion that the proposed water supply is still not adequate and cannot be provided without causing injury to decreed water rights.

It appears that in order to obtain a favorable opinion from this office on the proposed water supply to this subdivision, the applicant must do the following.

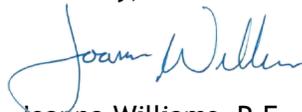
1. Provide information from Cherokee demonstrating that they are no longer using the 82 acre-feet of water claimed by the Applicant to meet their water commitments and that they can meet their water commitments without such water.

Additional Comments

According to the submitted material, stormwater detention structure(s) will be developed on the site. The applicant should be aware that, unless the structure can meet the requirements of a "storm water detention and infiltration facility" as defined in Designated Basin Rule 5.11, the structure may be subject to administration by this office. The applicant should review Rule 5.11 to determine whether the structure meets the requirements of the Rule and ensure any notification requirement is met.

If you or the Applicant have any questions, please contact Joanna Williams at (303) 866-3581 x8265 or at Joanna.Williams@state.co.us.

Sincerely,



Joanna Williams, P.E.
Water Resource Engineer

Ec: Referral No. 27762
Upper Black Squirrel Ground Water Management District