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MS-21-6 Skyfall Subdivision Filing No. 1
Minor Subdivision

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WATER SUPPLY REVIEW AND RECOMMENDATIONS

Project Description

1. This is a proposal by Ramses II Properties, LLC ("Applicant") for subdivision of 3 single-family lots from an existing 19.485-acre parcel (the "property"). The existing lot 1 will be 4.750 acres, lot 2 will be 5.0 acres, and lot 3 will be 9.433 acres. The property is zoned RR-5 (Rural Residential).

Estimated Water Demand

2. Pursuant to the Water Supply Information Summary ("WSIS"), the subdivision demand is 0.26 acre-feet/lot for in-house use, 0.36 acre-feet for irrigation, and 0.72 acre-feet for stock watering, for a total of 1.86 acre-feet/year for the 3-lot subdivision. Based on the total demand, Applicant must be able to provide a supply of 558 acre-feet of water (1.86 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 Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree in District Court, Water Division 2, Case No. 20CW3070 dated July 23, 2021 ("Decree" and/or "Augmentation Plan"). The Decree adjudicates the following water supply beneath Applicant's property:

AQUIFER	Annual Average Withdrawal 100 Years (Acre Feet)	Annual Average Withdrawal 300 Years (Acre Feet)	Total Withdrawal (Acre Feet)
Dawson (NNT)	11.5	3.83	1150
Denver (NNT)	10.5	3.5	1050
Arapahoe (NT)	8.7	2.9	870
Laramie-Fox Hills (NT)	5.7	1.9	571

The Decree and Augmentation Plan provide that Ramses Wells Nos. 1 and 2 will each pump up to 0.46 acre-feet of water per year and Ramses Well No. 3 will pump up to 0.94 acre-feet per year. The Decree details that “[h]ouseholds will utilize an estimated 0.25 acre feet of water per year per residence, with remaining pumping entitlements available for other uses on the property, including, for example, irrigation of lawn and garden and the watering of up to four horses or equivalent livestock, per residence.” The Augmentation Plan requires the replacement of actual stream depletions during pumping which are to be “septic return flows of the not-nontributary Ramses Wells Nos. 1 through 3.” Further, Applicant must reserve 571 acre-feet of Laramie-Fox Hills aquifer water rights to replace post-pumping depletions.

4. Applicant provided a *Water Resources Report for Skyfall Subdivision Filing No. 1* dated September 10, 2021 by MVE, Inc. (“*Report*”). The *Report* summarizes the wells and water demands as follows:

Currently constructed Ramses Well No. 1 (Lot 1) – Well Permit No. 86032-F¹

In-house use: 0.26 acre-feet per year
 Irrigation and stock-watering use: 0.20 acre-feet per year
 (Total = 0.46 acre-feet/year for 300 years or 138 acre-feet total for 300 years)

To be constructed Ramses Well No. 2 (Lot 2)

In-house use: 0.26 acre-feet per year
 Irrigation and stock watering use: 0.20 acre-feet per year
 (Total = 0.46 acre-feet/year for 300 years or 138 acre-feet total for 300 years)

To be constructed Ramses Well No. 3 (Lot 3)²

In-house use: 0.25 acre-feet per year³
 Irrigation and stock-watering use: 0.69 acre-feet per year
 (Total = 0.94 acre-feet/year for 300 years or 282 acre-feet total for 300 years)

¹ The original Permit No. 99861 was re-permitted to Permit no. 86032-F on September 10, 2021.

² Note: The *Report*, page 1, paragraph 3, incorrectly states the Ramses Well No. 3 is “currently constructed” and that Ramses Well No. 1 is “proposed”.

³ This amount differs from the WSIS which indicates household use of 0.26 acre-feet for all 3 lots.

The *Report* states that the “water supply for the residential lots using three (3) Dawson aquifer wells pursuant to the augmentation plan ... is sufficient” Further, it states that the Augmentation Plan requires replacement of actual stream depletions and reservation of all of Applicant’s available Laramie-Fox Hills aquifer water (571 acre-feet).

State Engineer’s Office Opinion

5. In a letter dated October 28, 2021, the State Engineer reviewed the proposal to subdivide the 19.485 +/- acre parcel into 3 single-family lots. The State Engineer stated that the “source of water is to be provided by three on-lot wells, producing from the Dawson aquifer, that will operate pursuant to the augmentation plan decreed by the Division 2 Water Court in case no. 2020CW3070. The water underlying this property was adjudicated and the applicant is the owner of the Dawson, Denver, Arapahoe, and Laramie Fox-Hills aquifers.” The State Engineer identified the total estimated water requirement at 1.86 acre-feet/year (0.26 acre-feet/year per residential lot, “with 0.69 a/f remaining for use on Lot 3 and 0.20 af/yr remaining for use on each of Lot 1 and Lot 2, as described in the decree for irrigation and domestic animal watering.”

The State Engineer noted that there is a currently operating well permit no. 86032-F which was re-permitted from the previous permit no. 99861 and which operates on Lot 1.

The State Engineer stated that the “annual estimated demand, for the entire subdivision, is 1.86 acre-feet as allowed by the augmentation plan. And finally, “[b]ased on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(I), that the anticipated water supply can be provided without causing material injury to decreed water rights so long as the applicant obtains well permits issued pursuant to C.R.S. 37-90-137(4) and the plan for augmentation noted herein, for all wells in the subdivision”

Recommended Findings

6. Quantity and Dependability. Applicant’s water demand for the Skyfall Subdivision Filing No. 1 is 1.86 acre-feet per year from the Dawson aquifer for a total demand of 558 acre-feet for the subdivision for 300 years, with replacement water occurring through non-evaporative septic systems to replace actual stream depletions, and with post-pumping depletions being met by the 571 acre-feet of Laramie-Fox Hills water owned by the Applicant.

Based on the water demand of 1.86 acre-feet/year for Skyfall Subdivision Filing No. 1 and the Decree and Augmentation Plan permitting withdrawals in that amount, the County Attorney’s Office recommends a finding of sufficient water quantity and dependability for Skyfall Subdivision Filing No. 1.

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 Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 dated July 23, 2021, the Water Supply Information Summary provided September 30, 2021, the Water Resources Report dated September 10, 2021, Well Permit No. 86032-F dated September 10, 2021, and the State Engineer Office's Opinion dated October 28, 2021. 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 Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 ("Decree and Augmentation Plan"). Water use shall not exceed 1.86 acre-feet annually for the 3-lot subdivision. Withdrawals from Ramses Well Nos. 1 and 2 and shall not exceed 0.46 acre-feet/year and withdrawals from Ramses Well No. 3 shall not exceed 0.94 acre-feet/year. Stream depletions shall be replaced with non-evaporative septic system return flows for a period of 300 years and post-pumping depletions will be replaced by Laramie-Fox Hills aquifer water pursuant to the Augmentation Plan.

B. The County prefers that when there is a augmentation plan, Applicant create a homeowners' association ("HOA") for the purpose of enforcing covenants and assessing any necessary fees related to compliance with the water determinations and replacement plans for the property. For minor subdivisions such as this, however, Applicant may elect to solely rely on the covenant provisions required below and forego creation of an HOA.

C. Applicant and its successors and assigns shall create restrictive covenants upon and running with the property which shall advise and obligate future lot owners of this subdivision and their successors and assigns regarding all applicable requirements of the Decree and Augmentation Plan, including their obligations to comply with the augmentation plan.

The covenants shall specifically address the following:

1) Identify the water rights associated with the property. The Covenants shall reserve 558 acre-feet of not nontributary Dawson aquifer water pursuant to Decree and Augmentation Plan to satisfy El Paso County's 300-year water supply requirement for the 3 residential lots of the Skyfall Subdivision Filing No. 1. The Covenants shall further identify that 282 acre-feet (0.94 AF/year) of Dawson aquifer water is allocated to Lot 3 and 138 acre-feet (0.46 AF/year) of Dawson aquifer water is allocated to each of Lots 1 and 2.

2) Advise of responsibility for costs. The Covenants shall advise lot owners and their successors and assigns of their obligations regarding the costs of compliance with the

Decree and Augmentation Plan, which include pumping of the Dawson wells in a manner to replace depletions during pumping and drilling Laramie-Fox Hills aquifer wells in the future to replace post-pumping depletions.

3) Require evaporative septic systems and reserve return flows from the same. The Covenants shall require each residential 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 or used for any other purpose. The Covenants more specifically shall require the Dawson aquifer well on each lot to be serving an occupied single-family dwelling that is generating return flows from a non-evaporative septic system before any irrigation or animal watering is allowed from the well. 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."

4) Require reservation of 571 acre-feet of Laramie-Fox Hills aquifer water to replace post-pumping depletions pursuant to the Decree and Augmentation Plan. The Covenants shall further identify that 288.57 acre-feet of Laramie-Fox Hills aquifer water is allocated to Lot 3 and 141.215 acre-feet of Laramie-Fox Hills aquifer water is allocated to each of Lots 1 and 2. The Covenants shall recite that this water shall not be separated from transfer of title to the Property and shall be used exclusively for augmentation supply.

5) Address future lot conveyances. 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 Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 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."

6) Advise of monitoring requirements. The Covenants shall advise future lot owners of this subdivision and their successors and assigns of their responsibility for any metering

and data collecting that may be required regarding water withdrawals from Dawson aquifer wells.

7) Address amendments to the covenants. 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 Skyfall Subdivision Filing No. 1 pursuant to the Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070. Further, written approval of the 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 an Order from the Division 2 Water Court 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) Address termination of the Covenants. The Covenants shall address termination using the following or similar language:

"These Covenants shall not terminate unless the requirements of the Amended Findings of Fact, Conclusions of Law, Ruling of Referee and Decree, Case No. 20CW3070 are also terminated by order of the Division 2 Water Court and a change of water supply is approved in advance of termination by the Board of County Commissioners of El Paso County."

D. Applicant and its successor assigns shall reserve and convey by recorded warranty deed the reserved Dawson and Laramie-Fox Hills aquifer water rights at the time of lot sales. Specifically, Applicant and future lot owners shall convey sufficient water rights in the Dawson and Laramie-Fox Hills aquifers underlying the respective lots pursuant to the Decree and Augmentation Plan. Sufficient water rights are 138 acre-feet of Dawson aquifer water and 141.215 acre-feet of Laramie-Fox Hills aquifer each for Lots 1 and 2 and 282 acre-feet of Dawson aquifer water and 288.57 acre-feet of Laramie-Fox Hills aquifer water for Lot 3.

Any and all conveyance instruments shall recite as follows:

For the water rights and return flows conveyed for the primary supply (Dawson and Laramie-Fox Hills aquifers): "These water rights conveyed, and the return flows therefrom, are intended to provide a 300-year supply, replacement during pumping, and replacement of post-pumping depletions for each lot of the Skyfall Subdivision Filing No. 1. 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