

January 23, 2008

Mr. Thomas F. Stewart
County Manager, Lincoln County
P.O. Box 711
Carrizozo, NM 88301-0711

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Re: Rainmakers Subdivision, Units Six, Seven, and Eight

Dear Mr. Stewart:

The Water Use & Conservation/Subdivision Review Bureau of the Office of the State Engineer has reviewed the referenced subdivision proposal pursuant to the Lincoln County Subdivision Ordinance, the New Mexico Subdivision Act and the OSE Rules and Regulations Governing The Use Of Public Underground Waters For Household Or Other Domestic Use.

Based on the information provided, this office has determined that the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses, and that the subdivider can fulfill the proposals in his disclosure statement concerning water, excepting water quality. Accordingly, a **positive** opinion is issued.

A staff memorandum providing specific comments is attached for your information. If you have any questions, please call Jerry Keller at 505-827-3845.

Sincerely,

John W. Longworth, P.E.
Water Use & Conservation/Subdivision Review Bureau Chief

Encl.

cc: OSE Water Rights Division, Roswell Office

JK:jk

MEMORANDUM
New Mexico Office of the State Engineer
Water Use and Conservation Bureau

DATE: January 23, 2008
TO: John Longworth, P.E. Water Use & Conservation Bureau Chief
FROM: Jerry Keller, Senior Water Resource Specialist
SUBJECT: Rainmakers Subdivision, Units Six, Seven, and Eight in Lincoln County

SUMMARY

On December 27, 2007 the Office of the State Engineer (OSE) received additional/revised information for the Preliminary Plat for Rainmakers, Units Six, Seven, and Eight, a Type-Two Subdivision. The proposal is a request to subdivide an 86.572-acre parcel into 60 single-family residential lots ranging in size from 0.379-acres to 1.379-acres each, 1 multi-family (12 dwelling units) lot containing 6.2 acres, a 0.874-acre park, and a 0.814-acre golf course maintenance lot. The proposed water supply is by CDS Rainmakers Utilities, LC (Rainmakers). The property is located approximately 8.5 miles northeast of Ruidoso, within Sections 21 and 22, Township 10 South, Range 14 East, NMPM.

This office reviewed Rainmakers Phase One-Five in 2002 and 2003 and deferred offering a final opinion on the proposed subdivision until the outcome of the pending water right hearing was concluded. Subsequently, the protest was withdrawn and the OSE permit for applications H-1122-S-6 and H-1122-S-7 was issued on June 21, 2004.

A negative opinion was issued for Units Six, Seven, and Eight on June 14, 2007 for the reason that the proposal was not in compliance with the requirements of the Section 18-2-D of the Lincoln County Subdivision Ordinance (2006-05) and Section 47-6-11 F (1) of the New Mexico Subdivision Act.

The revised/additional water supply documents submitted to this office consist of a letter addressing previous comments and EXHIBITS "A" through "I".

The revised proposal was reviewed pursuant to the Lincoln County Subdivision Ordinance 2002-02 (Ordinance) and the New Mexico Subdivision Act (Act). The water supply proposal is in substantial compliance with the requirements of the Ordinance and the Act. Accordingly, a **positive** opinion should be issued.

WATER DEMAND ANALYSIS AND WATER CONSERVATION

Section 18.2.A of the Regulations requires that the annual water requirement for both indoor and outdoor purposes, for each parcel in a residential subdivision shall be .25 acre-feet per year, unless a detailed water demand analysis approved by the Board of County Commissioners justifies the use of a different figure. Under Item R of the Disclosure Statement the subdivider

specifies the average annual water use is 0.21 acre-feet per lot. An acceptable detailed water demand analysis was submitted with the Unit One-Five proposal.

Water conservation measures are included in Item DD of the Disclosure Statement and paragraph 26 and 27 of exhibit "1" of the Covenants, Conditions, and Restrictions. Natural vegetation and landscaping is mandatory. Grass area is restricted to 800 square feet and requires subterranean irrigation. An integrated rainwater collection system is required on each lot.

Strict enforcement of the water use restrictions will be required to ensure that the water budget is not exceeded.

WATER AVAILABILITY ASSESSMENT

The proposed water supply for the subdivision is by Rainmakers. The proposal contains a Certification by Rainmakers indicating that the utility is willing and able to provide water service to the development as required by Section 17.2.B of the Regulations.

The ability of Rainmakers to provide water service to existing commitments and serve the additional requirements of Units One-Five was reviewed as part of the initial submittal in 2002 and 2003. The information presented demonstrated that the utility held sufficient water rights and was able to provide the estimated annual water requirements for 899 lot equivalents at 0.2088 acre-feet per annum plus fire flow requirements, additional commitments of 18.73 acre-feet, and a 10% line loss for a period in excess of 40-years.

The current proposal states that the service commitments have been reduced by 100 lot equivalents and service is available to serve the 72 equivalent lots (60 single-family and 12 condominium-type units) in the proposed subdivision. The revised total commitments, including the proposed subdivision, are 871 equivalent lots. This results in a 28-lot reduction in service commitments. From the 2003-2003 proposal it is not clear if the lot commitments have been approved through final plat.

This office recommends that Rainmakers provide documentation showing the quantity of water presently produced annually, quantity of water supply commitments to date, and proof of sufficient water rights in place to meet both existing demand, commitments not yet connected, and the water requirements of the proposed subdivision.

Page 1, paragraph 5, of the Water Supply Plan indicates that Units Six, Seven, and Eight are using 74 of the 100 lots equivalents discussed above. The water system demand analysis indicates 72 lot equivalents are utilized. The apparent discrepancies should be resolved.

In EXHIBIT "C" of the additional information submitted, the developer specifies that the golf course is irrigated with leased water rights and Rainmakers is currently in negotiations to

purchase the rights. The amount of water is 48.75 acre-feet per year, which may be increased to 97.5 acre-feet per year with an approved return flow plan. Exhibit "G" is an agreement between Rainmakers and CDS Rainmakers Golf, L.C. that prioritizes water use in case of a shortage of supply. The 1st priority is domestic use, 2nd is commercial use, and the 3rd priority is agriculture/recreational use (golf course). The current golf course demand is not provided.

As part of this proposal, Rainmakers is rescinding its service commitments to Enchanted Valley Estates. An agreement to provide service between the developer of the Enchanted Valley Estates and Rancho Ruidoso Village Water Company was executed in 1983. The developer apparently failed to construct the required facilities to serve the subdivision. Rainmakers, as Successor in interest to the Rancho Ruidoso Village Water Company, terminated this agreement in June 2006. A copy of the "Termination of Agreement To Extend Water Distribution System" is included in the additional information submitted.

With regard to the termination of the obligation for Rainmakers to serve the remaining 51 lot in the existing Enchanted Valley Estates subdivision the developer states the undeveloped lots "may apply for domestic well permits." Eight of the original 59 lots are currently receiving and will continue to receive water service from Rainmakers.

The OSE notes that in the review of this proposal, no information was provided to support water availability for domestic wells in Enchanted Valley Estates.