F I N A L

Appendix J to S

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C O Y O T E S P R I N G S
I N V E S T M E N T

P L A N N E D D E V E L O P M E N T P R O J E C T

Coyote Springs Investment Planned Development Project

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Prepared EIS for:

LEAD AGENCY
U.S. Fish and Wildlife Service
Reno, NV

COOPERATING AGENCIES
U.S. Army Corps of Engineers
St. George, UT

U.S. Bureau of Land Management
Ely, NV

Prepared MSHCP for:

Coyote Springs Investment LLC
6600 North Wingfield Parkway
Sparks, NV 89496

Prepared by:

ENTRIX, Inc.
2300 Clayton Road, Suite 200
Concord, CA 94520

Huffman-Broadway Group
828 Mission Avenue
San Rafael, CA 94901

Resource Concepts, Inc.
340 North Minnesota Street
Carson City, NV 89703

COYOTE SPRINGS INVESTMENT PLANNED DEVELOPMENT PROJECT

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ENTRIX, Inc.
2300 Clayton Road, Suite 200
Concord, CA 94520
Phone 925.935.9920 ▪ Fax 925.935.5368

Huffman-Broadway Group
828 Mission Avenue
San Rafael, CA 94901
Phone 415.925.2000 ▪ Fax 415.925.2006

Resource Concepts, Inc.
340 North Minnesota Street
Carson City, NV 89703
Phone 775.883.1600 ▪ Fax 775.883.1656

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APPENDIX K

Summary of Nevada Water Law and its Administration

K.1 SUMMARY OF NEVADA WATER LAW

The development of the CSI Development is anticipated to occur over a 40-year period. The CSI Development schedule and the nature of the development will be determined by the water supply that is available to the general improvement district for serving customers within its service territory (the development area). In the event less water is obtained than necessary to meet the needs of the current planned development the nature of the development will change by reducing the amount of residential development and increasing the amount of low water development such as commercial and light industrial uses. The footprint of the development would not be reduced.

Development will occur over time and the water supply will be obtained in phases during the course of development in accordance with Nevada Water Law. At present, the only groundwater supply approved by the State Engineer (Ruling #5712) and designated for use within the CSI Development is 1,000 acre-feet appropriated within the Kane Spring Valley. Potential groundwater sources for the additional water supply have been identified in the MSHCP and this EIS. CSI does not intend to transfer any surface waters to the CSI Development.

Under Nevada Water Law, all surface and groundwater within the boundaries of Nevada belong to the public. NRS §533.025. The appropriation of water provides the holder of the right with State authorization take and beneficially use a specified quantity, for a specific purpose within a designated place of use. Beneficial use is the basis, measure and limit of the right to the use of water. NRS §533.035. Further, NRS §533.045 provides that no person shall be permitted to divert water of the State except when the water is required for a beneficial purpose.

Nevada Water Law establishes a specific process for the approval of applications for new appropriations and changes in the point of diversion, manner and place of use of existing rights. The process starts when the State Engineer receives an application or group of applications for either a new appropriation or for the change of an existing right. Upon receipt the application and accompanying map are reviewed for completeness. If incomplete, the application and/or map are returned for correction. A sixty day period is provided for returning the corrected documents. Once complete, a notice of the application is published once a week for four (4) consecutive weeks in a general circulation newspaper printed and published in the county where the proposed water right is located. The notice identifies the application, the date of filing, the name and address of the applicant, the name of the proposed water source, the location of the proposed point of diversion, and the proposed manner of use. A protest period commences with the date the notice is first published and expires 30-days after the final publication date. Any interested person may file a protest prior to the expiration of the protest period. The State Engineer will consider all protest received and may elect to hold a hearing and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved.

K.2 SUMMARY OF ADMINISTRATION OF NEVADA WATER LAW

There are general requirements that apply to all applications for new appropriations and the change of existing rights. Additional requirements must be satisfied in connection with inter-basin transfers and inter-county transfers, whether the applications relate to new appropriations or the change of existing rights.

Generally, applications describing a place of use within the same basin as the point of diversion are only subject to the general requirements. However, they may be subject to inter-county transfer requirements if basin lies within two counties and the point of diversion is in one county and the place of use is in the other county. It is anticipated that a significant portion, if not all, of the water supply, necessary to serve the CSI Development will be provided by approved inter-basin transfers.

Prior to approving any application for a new appropriation of groundwater or the change of an existing groundwater right, the State Engineer must find that: (1) the application fee has been paid; (2) there is unappropriated water available in the proposed source; (3) the proposed use or change, if within an irrigation district, does not adversely the costs to other users within the district or the efficiency of the district to delivery the water; (4) the applicant intends, in good faith, to construct the works necessary to place the water to beneficial use with reasonable diligence; (5) the applicant has the financial ability and reasonable expectation

to actually construct the work and place the water to beneficial use with reasonable diligence; (6) existing rights will be protected; (7) approval will not create conflicts with protectible interest in domestic wells; and (8) approval will not result in detrimental threats to the public interest.

In addition to the above findings, before approving an inter-basin transfer the State Engineer must also find that: (1) the applicant justified the need to import water from another basin; (2) that a water conservation plan has been adopted and is being implemented in the basin of import if the State Engineer determined that a conservation plan is advisable; (3) the proposed action is environmentally sound as it relates to the basin of origin; (4) the proposed action is an appropriate long-term use that will not unduly limit development within the basin of origin; and (5) any other factor the State Engineer determined to be relevant was adequately addressed.

Starting with the issuance of Order 1169 (dated March 8, 2002), the State Engineer has consistently issued rulings in connection with applications for appropriations from the carbonate aquifer or applications relating to inter-basin transfers of existing rights taking into account all of the issues described below. The State Engineer has frequently required additional studies, including extended pump tests, before acting on applications or issuing a portion of the requested appropriations and requiring additional studies, including extended pumping and monitoring, be completed prior to granting any additional applications. In the event the results of the studies do not support the granting of additional permits the State Engineer will deny the applications.

The State Engineer has discretion, but not unlimited discretion, in determining those matters to consider when considering whether a proposed action may prove detrimental to the public interest. Principally, the State Engineer analyzes proposed actions under the policy considerations set forth in Nevada Water Law. The following policy considerations are set forth in Pyramid Lake Paiute Tribe v. Washoe County, 112 Nev. 743, at 746-747:

- whether the appropriation is for a beneficial use;
- has the applicant demonstrated the amount, source and purpose of the appropriation;
- if for a municipal supply, has the applicant demonstrated the approximate number of persons to be served and the approximate future requirements;
- that the right to divert ceases when the use for the water no longer exists;
- has the applicant demonstrated the magnitude of the water use;
- in considering extension of time to apply water to beneficial use, the State Engineer must consider the number of parcels and commercial and/or residential units planned in the development, economic conditions affecting the ability of the developer to complete the application of water to beneficial use, and the period approved by a local government for completion of the development;
- whether the applicant has the financial capability to develop the water and place it to beneficial use;
- the State Engineer may cooperate with federal authorities in monitoring the development and use of water within the State;
- the State Engineer may cooperate with California authorities in monitoring the future needs and uses within the Lake Tahoe area;
- that the rotation in use is authorized to bring about a more economical use of supplies;
- the State Engineer may determine whether there is over pumping of groundwater and refuse to issue permits if there is no unappropriated water available;
- the State Engineer may determine what is a reasonable lowering of the static water level after taking into account the economics of pumping for the general type of crops growing and the effect of water use on the economy of the area in general; and
- within a designated area, the State Engineer may monitor and regulate the water supply.

In Ruling 5726 issued April 16, 2007, the State Engineer stated that his authority is limited to considerations identified in Nevada water policy statutes. The State Engineer does not include factors set forth in the Nevada Statutes requiring to act in the consideration of the water right applications. Specifically, the State Engineer held that the Nevada Division of Environmental Protection has jurisdiction over air pollution matters and that such matters are outside of the State Engineers authority. Also, the State Engineer noted that growth control and land use decisions are the responsibility of local government bodies and such decisions are outside the scope of his authority. Further, the State Engineer stated that the public interest analysis looked at the benefits of the project, the protection of threatened or endangered species and the protection of water quality of water sources, but water should be allocated to reasonable and economic use so long as other public interest values are not unreasonably compromised.

In addressing "environmentally sound" in Ruling 5726, the State Engineer noted it has been left to the State Engineer's discretion in to interpret the meaning of "environmentally sound." It is noted the legislative history of NRS §533.370(6)(c) shows there was minimal discussion regarding the term. The history does disclose that the State Engineer testified that he was not to be the guardian of the environment, but the guardian of the State's surface and ground water. The State Engineer pointed out that he was neither a range manager nor environmental scientist. Senator James testified that by use of the term he did not intend to create an environmental impact statement process for every interbasin water transfer application, and the State Engineer's responsibility should be for the hydrologic environmental impact on the basin of export. In Ruling 5726, the State Engineer considered whether sources of water for wildlife will remain accessible and viable, the extent non-potable water could be drawn into a potable water supply, and the effects water level decline might have on hydrologic-related natural resources, specifically plant communities. The State Engineer determined that requiring (1) the collection of baseline biological and hydrological data, (2) a significant monitoring and mitigation plan, (3) requiring staged development and continuing biological and hydrological studies during development provided sufficient safeguards to ensure the transfer would be environmentally sound. Finally, the State Engineer approved the Applications subject to the following conditions:

- existing rights;
- payment of statutory fees;
- a monitoring and mitigation program approved by the State Engineer a minimum of 5-years before the export of any water;
- a minimum of 5-years of biological and hydrological baseline data collection by the Applicant and approved by the State Engineer prior to the export of any water;
- a minimum 10-year period during which a maximum of 40,000 afa can be pumped in any one year with a 10 consecutive year average of pumping at least 35,000 afa;
- file an annual report with the State Engineer by March 15th of each year detailing the findings of the approved monitoring and mitigation plan;
- the total combined duty under all Permits is limited to 60,000 afa, subject to staged development guidelines and the findings of the initial staged development period; and
- if pumpage impacts existing rights, conflicts with the protectible interests in existing domestic wells or is found to not be environmentally sound the Applicant will be required to curtail pumpage and/or mitigate the impacts to the satisfaction of the State Engineer.

While each application or group of applications, as applicable, are analyzed by the State Engineer on a case-by-case basis it is clear the State Engineer will consider potential impacts to and the need to protect existing rights, water pollution, wildlife and hydrologic-related natural resources. CSI will need to satisfy all requirements and conditions imposed by the State Engineer in connection with each phase of water proposed for development to serve the CSI Development.