

# WATER & SEWER BOARD AGENDA

Wednesday, August 19, 2015  
2:00 p.m.

LINCOLN PARK ANNEX  
NUSBAUM ROOM  
919 7<sup>th</sup> Street  
Greeley, CO 80631

1. Roll Call:        \_\_\_\_\_ Chairman Harold Evans        \_\_\_\_\_ Vice Chairman Mick Todd  
                      \_\_\_\_\_ Mr. Bob Ruyle    \_\_\_\_\_ Mr. Fred Otis  
                      \_\_\_\_\_ Mr. Joe Murphy    \_\_\_\_\_ Mr. Tony Miller  
                      \_\_\_\_\_ Mr. Manuel Sisneros                                   \_\_\_\_\_ Mayor Tom Norton  
                      \_\_\_\_\_ Mr. Roy Otto    \_\_\_\_\_ Ms. Victoria Runkle
2. Approval of Minutes
3. Approval of and/or Additions to Agenda
4. Action: Approve Greeley/Larimer County IGA for Lions Open Space Riverbank Repairs
5. Action: Approve IGA with Fort Collins and Recommend to Council
6. Legal Report
  - Action: Statements of Opposition (if any)
7. Report: Northern Integrated Supply Project - Supplemental Draft of the Environmental Impact Statement
8. Executive Session
9. Action: Authorize Staff and Counsel to File a Water Court Application to Change the Rockwell Reservoir Conditional Water Rights
10. Information: Cash-In-Lieu Update
11. Director's Report
12. Such Other Business That May Be Brought Before The Board and Added to This Agenda by Motion of the Board.



*If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Lory Stephens at 970-350-9812.*

**City of Greeley**  
**Water and Sewer Board**  
**Minutes of July 15, 2015**  
**Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, July 15, 2015.

**1. Roll Call**

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Robert Ruyle, Fred Otis, Manuel Sisneros, Joe Murphy, Tony Miller, City Manager Roy Otto, and Director of Finance Victoria Runkle

Water and Sewer Department staff:

Water and Sewer Director Burt Knight, Deputy Director of Water Resources Eric Reckentine, Budget Analyst Erik Dial, Water Resources Operations Manager John Thornhill, Water Resource Analyst Danielle Perrot, Office Manager Lory Stephens, and Senior Administrative Specialist Shannon Metcalf

Legal Counsel:

City Attorney Doug Marek, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, and Water and Sewer Board Counsel Jim Witwer

Other Guests:

Citizens Jack Schneider and Ty Notestine; Northern Colorado Water Conservancy District staff members Eric Wilkinson, Dan Carlson, and Jerry Gibbens

**2. Approval of Minutes**

There were no changes to the minutes. A motion was made by Mr. Miller and seconded by Mr. Todd to approve the minutes from the June 17, 2015 Water and Sewer Board Meeting as presented. The motion carried 7-0.

**3. Approval of and/or Additions to Agenda**

Mr. Knight stated that an Executive Session was not necessary this month. There were no other changes to the agenda.

Fred Otis joined the meeting at 2:02 p.m.

**4. Report: Northern Colorado Water Conservancy District**

Mr. Don Carlson of Northern Colorado Water Conservancy District presented an update on the Windy Gap FIRMING Project to the Board. Mr. Carlson discussed various milestones to date, such as NEPA scoping, the Draft and Final EIS, 1041 Permit from Grand County, and Reclamation Decisions.

Mr. Carlson stated that the only milestones left are the 404 Permit and the 401 Certification. It is expected that these milestones will be completed in 2015 and actual construction is anticipated to begin in 2018. Mr. Carlson went on to state that the cost estimate was recently revised. It increased from \$290M to \$380M (which equates to \$3,300 per acre foot increased to \$4,300 per acre foot).

Donna Brosemer joined the meeting at 2:16 p.m.

Vice Chairman Todd asked if the milestone completion dates are realistic. Mr. Carlson advised that all indications show that the time frame is realistic and that NCWCD is working directly with the Corps to ensure those dates. Mr. Jerry Gibbens of NCWCD then presented the 2014 Rate Study Summary. The Cost of Service study focused on goals and objectives, which included determining what adjustments are needed in Northern Water's revenue structure (primarily assessment rates) to ensure the future financial health of the organization and continue meeting C-BT O&M commitments. The objectives included determining how much revenue is needed, what is an equitable allocation of costs between different classes of C-BT water users, how rates should be adjusted to meet future financial needs and how do rates compare with other organizations.

NCWCD General Manager Eric Wilkinson then concluded the presentation with a discussion of District Rule 11's application to C-BT water rentals and the fee charged with respect to rentals involving the holders of C-BT units under fixed-rate contracts.

Chairman Evans thanked the NCWCD staff for personally delivering the information to the Board.

The presenters from NCWCD left the meeting at 3:14 p.m.

**5. Action: Approve Cash-in-Lieu**

Mr. Reckentine explained that during the previous study period (January-March 2015), the average Cash-in-Lieu cost per unit was \$26,000 or the equivalent of \$34,000 per acre-foot. The Water and Sewer Board previously set the rate for cash-in-lieu at \$33,000 per acre-foot. The total average cost per unit over the April-June 2015 study period has dropped to \$25,000 or the equivalent of \$33,000 per acre-foot. Staff recommends that Cash-in-Lieu remain at \$33,000 per acre-foot.

A motion was made by Mr. Ruyle and seconded by Mr. Murphy to approve Cash-in-Lieu at the existing rate of \$33,000.00 per acre foot. The motion carried 7-0.

**6. Report: 2014 Water Supply Update**

Mr. Thornhill gave an update on the water supply as part of the Drought Emergency Plan. In April, the water supply forecast was above target storage. The Climate Prediction Center forecasted for the Greeley area above average precipitation conditions during April, May and June. The July forecast actually continues to show increased precipitation.

Mr. Thornhill noted that water supply is still above the target storage volume and as such the recommendations for an "Adequate Water Year" continues. This would include the normal three day a week water restrictions and to maintain the target storage volume of 20,000 acre feet.

Mr. Knight commended Mr. Thornhill and Ms. Perrot on the report and the new graphics.

**7. Action: Approve Water & Sewer Budget Setting Process Ordinance and Recommend to Council**

Danielle Perrot left the meeting at 3:30 p.m.

Mr. Knight gave a summary of the budget setting process ordinance. The draft Ordinance will replace Joint Resolution 16, 2002 which was approved by the Water & Sewer Board and City Council for developing the Water & Sewer Department Budget. The reason for the proposed Ordinance is to establish an easily retrievable document by staff and the public to follow the budget process.

Chairman Evans stated that this is really not different from what is in place now. The exception being that staff will get some guidance from City Council and the Water & Sewer Board before they are too deep in the budget process. Mr. Knight reiterated that this ordinance would strengthen communication with City Council. The ordinance also puts the information where the public can see it to ensure transparency.

A motion was made by Mr. Ruyle and seconded by Mr. Murphy to approve the Water & Sewer Budget Setting Process Ordinance and Recommend to Council. The motion carried 7-0.

**8. Action: Approve Resolution Concerning Water Court Applications for Findings of Reasonable Diligence to Continue Conditional Water Rights, or to Make Conditional Water Rights Absolute**

Mr. Reckentine explained that Greeley holds a number of decreed conditional water rights and may obtain additional decreed conditional water rights in the future. Every six years after a water right has been conditionally decreed or a finding of reasonable diligence has been made, the holder of the conditional water right must file an application in water court for a finding of reasonable diligence in order to continue the conditional water right, or file an application to make the conditional water right absolute. This resolution formalizes in writing the Board's general delegation of authority for the filing of applications in water court to continue or make absolute Greeley's existing or future decreed conditional water rights.

Chairman Evans stated that it might be appropriate for staff to update the Board annually with current and future water rights filings.

A motion was made by Mr. Murphy and seconded by Mr. Todd to approve the Resolution Concerning Water Court Applications for Findings of Reasonable Diligence to Continue Conditional Water Rights, or to Make Conditional Water Rights Absolute. The motion carried 7-0.

## 9. Executive Session

There were no items for the Executive Session

## 10. Legal Report

Mr. Witwer recommended filing two statements of opposition this month.

Statements of Opposition:

- a. **Platte River Power Authority and City of Fort Collins (Case No. 15CW3053):** This is an application for finding of reasonable diligence concerning certain conditional appropriative rights of exchange (originally decreed in 1979 in Case No. W-9322-78). The exchanges include Joe Wright, Long Draw, Horsetooth, Timnath, Milton Seaman, Rockwell, and Barnes Meadow Reservoirs (latter three facilities owned/claimed by Greeley) and overlap numerous key exchange reaches in the Cache la Poudre Basin where Greeley also holds appropriative rights of exchange.
- b. **City of Fort Collins (Case No. 15CW3062):** This is an application for finding of reasonable diligence concerning certain conditional appropriative rights of exchange (originally decreed in 1996 in Case No. 92CW129); exchanges include Halligan, Milton Seaman, and Fossil Creek Reservoirs as well as the City of Greeley Pipeline (i.e., intake into Bellvue water treatment plant), and overlap

numerous key exchange reaches in the Cache la Poudre basin where Greeley also holds appropriative rights of exchange.

Mr. Todd moved that the Board authorize the filing of statements of opposition in Case Numbers 15CW3053 and 15CW3062, and for staff and legal counsel to seek resolution of issues raised by the case as consistent with Water and Sewer Board Resolution No. 3, 2015. The motion was seconded by Mr. Miller. The motion carried 7-0.

**11. Director's Report**

- **Water & Sewer Summer Board Tour – July 24<sup>th</sup>**  
Mr. Knight reminded the Board that this summer's Board tour will be held on July 24<sup>th</sup>.
- **Water & Sewer Summer Citizen Tour – August 7<sup>th</sup>**  
Mr. Knight reminded the Board that the Water & Sewer Department is also hosting a tour for citizens on August 7<sup>th</sup>.
- **City of Fort Collins Access Easement**  
Mr. Knight advised the Board that the Fort Collins City Council approved the access easement to Greeley's pipeline for the Brinks property. It will be brought before Board and City Council next month for review and approval.
- **Weld County Draft 1041 Regulations**  
Mr. Reckentine noted that staff attended a meeting with the Weld County Commissioners on June 19<sup>th</sup>. Based upon the meeting, it is the County's intent to regulate cities such as Thornton and Castle Rock that are taking large volumes of water outside of Weld County. The exact language has not been drafted; therefore staff will keep a close eye on the status of this regulation.

**12. Such Other Business That May Be Brought Before The Board And Added To This Agenda by Motion of the Board**

There being no further business, Chairman Evans adjourned the meeting at 4:01 p.m.

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\_\_\_\_\_  
Harold Evans, Chairman

\_\_\_\_\_  
Shannon Metcalf, Senior Administrative Assistant

**WATER & SEWER BOARD AGENDA AUGUST 19, 2015**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:            4

TITLE:                    GREELEY/LARIMER COUNTY IGA FOR  
LIONS OPEN SPACE RIVERBANK REPAIRS

RECOMMENDATION:      RECOMMEND THAT MAYOR SIGN  
ATTACHED IGA AFTER SIGNATURE BY  
LARIMER COUNTY COMMISSIONERS.

ADDITIONAL INFORMATION: Implementation of this Intergovernmental Agreement (“IGA”) will transfer matching grant funds from Greeley to Larimer County to fund repairs of riverbank restoration that was previously established by Greeley.

Greeley and Larimer County were jointly awarded \$150,000 through a matching grant from the Colorado Water Conservation Board (“CWCB”) for the repairs of Lions Open Space following the 2014 flooding. Greeley had previously made improvements to this stretch of the Poudre River in Laporte Colorado in an effort to establish mitigation credits for the benefit of various Greeley projects under review that could affect the river.

The CWCB matching grant does not designate how the funds are to be split between Greeley and Larimer County. This IGA will allow Larimer County to use all of this grant funding for their construction efforts to make repairs to the riverbank restored by Greeley in the same manner as before. Greeley will be able to the claim mitigation credits.

## INTERGOVERNMENTAL AGREEMENT

This is an Intergovernmental Agreement ("Agreement"), by and between the City of Greeley, Colorado ("Greeley"), and Larimer County, Colorado ("Larimer County"), (collectively, "the Parties") entered into this \_\_\_\_ day of \_\_\_\_\_, 2015.

### RECITALS

WHEREAS, Lions Open Space comprises approximately 21 acres situated on both sides of an approximate 1,200 linear foot reach of the Cache la Poudre River ("Poudre"). The east bank of the Poudre comprises the public portion of Lions Open Space, and the west bank is reserved for native habitat; and,

WHEREAS, Lions Open Space is owned by Colorado Parks & Wildlife ("CPW") and leased and managed by Larimer County through its Larimer County Parks and Open Lands; and,

WHEREAS, Greeley maintains significant water infrastructure in the Poudre watershed and is currently constructing the Bellvue Pipeline Northern Segment ("Pipeline"). The Pipeline will entail installation of a 60-inch water pipeline over a distance of approximately 6.5 miles from the end of the existing pipe at Shields Street in Fort Collins to the Bellvue Water Treatment Plant at the mouth of the Poudre Canyon; and,

WHEREAS, Greeley submitted to the United States Army Corps of Engineers ("Corps") a Notice of intent to Implement Compensatory Mitigation in Advance of Potential Future Impacts by initiating the Lions Open Space Advance Compensatory Mitigation Project ("Project") under Regional General Permit 12 signed by Allan Steinle on October 11, 2011 ("Regional General Permit"); and,

WHEREAS, the Corps authorized the Project on July 24, 2012 via a letter ("Letter") from Timothy T. Carey, Chief, Denver Regulatory Office of the Department of the Army, Corps of Engineers, Omaha District; and,

WHEREAS, Greeley submitted an application to CPW for a special use permit for the Project; and,

WHEREAS, CPW authorized the Project by Temporary Special Use Agreement ("Use Agreement") for CDOW Properties on August 3, 2012; and,

WHEREAS, Larimer County authorized the Project through a Special Event Permit ("Special Event Permit") issued July 30, 2012, and a Floodplain Development Permit ("Floodplain Development Permit") issued August 1, 2012; and,

WHEREAS, Greeley completed much of the Project and was proceeding with the maintenance and monitoring phase in October 2012, but that work was damaged by high flows in the Poudre associated with September 2013 flooding. Greeley repaired much of the damage to the east bank in April 2014, including completion of mitigation on the east bank,



but was unable to access the west bank to repair any damage or perform planned work. Although Greeley had planned to complete replanting of repaired areas of the east bank, high flows from the recent 2014 runoff season caused significant additional damage to both banks, as well as some damage to the stream bed; and,

WHEREAS, Larimer County wishes to complete repairs to Lions Open Space in substantial accordance with the original design and scope of the Project; and,

WHEREAS, the Corps has agreed to jointly issue a Nationwide Permit 3 for repair, rehabilitation or replacement of any authorized, currently serviceable structure or fill, as long as the work remains within the Project's boundaries; and

WHEREAS, Greeley and Larimer County have been jointly awarded funds from the Colorado Water Conservation Board ("CWCB") under the Stream Restoration Grant Program, established by Senate Bill 14-179, for the repairs of Lions Open Space following the 2014 flooding; and,

WHEREAS, Greeley intends to transfer its portion of the CWCB grant to Larimer County to facilitate efficient repairs; and,

WHEREAS, Greeley has obtained and delivered to the Project site substantial quantities of boulders and rock to be used in the repairs, which Greeley intends to donate to Larimer County to facilitate efficient repairs; and,

WHEREAS, Greeley and Larimer County wish to enter into this AGREEMENT to coordinate completion of the Project and repairs to Lions Open Space; and,

WHEREAS, pursuant to Colorado Revised Statutes §29-1-203(1), Greeley and Larimer County may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each; and,

WHEREAS, pursuant to Section 02.07.040 of the Greeley Municipal Code, Greeley has the authority to enter into cooperative or joint activities with other governmental bodies if approved by resolution; and,

WHEREAS, it is in the best interests of the citizens of Greeley and Larimer County for the Parties to enter into this AGREEMENT.

NOW, THEREFORE, in consideration of the promises and covenants of the Parties, and other consideration, the receipt and adequacy of which are acknowledged, it is agreed by and between Greeley and Larimer County as follows:

## **AGREEMENT**

1. RECITALS. The foregoing Recitals are incorporated into and made a part of this AGREEMENT.

2. AUTHORITY. This Agreement has been duly adopted by the Parties' governing bodies and the undersigned representatives are authorized to execute this Agreement on behalf of each respective Party.

3. TRANSFER OF DUTIES.

Repairs ("repair(s)") are defined as improvements to the east bank of the Poudre River through Lions Open Space, necessitated by the September 2013 flood and 2014 spring runoff. Greeley is authorized to complete these repairs through the Corps Regional General Permit and Letter, CPW Use Agreement and Larimer County Special Event Permit and Floodplain Development Permit. Repairs are limited to stabilizing the bank through the importation of rock, soil and vegetation.

3.1. Greeley hereby transfers to Larimer County its portion of the CWCB grant along with a letter informing CWCB of the transfer and offering its support of Larimer County.

3.2. Greeley hereby donates the rock and boulders located at the Project site to Larimer County to use for repairs.

3.3. Larimer County will solely be responsible for planning and implementing repairs and will use the entire CWCB grant and other funding sources necessary to complete the repairs under the conditions of the Nationwide Permit 3.

3.4. Larimer County will keep a precise accounting of materials and labor expended on the Project and the sources of funding used to pay for said labor and materials, and provide those details to Greeley.

3.5. Upon completion of all repairs, Greeley will monitor the Project as conditioned by the Corps' Letter.

3.6. Greeley will document and apply to the Corps for any mitigation credits for the Project.

3.7. Larimer County and Greeley have no obligation to maintain the Project in the event of additional flood damage and have no obligation to make additional repairs beyond 2015.

3.8. Larimer County is not responsible for additional repairs once performance criteria are met. The only performance criterion that applies to Larimer County is the 70% plant cover requirement listed under General Conditions Section 10 of the Regional General Permit. Larimer County will provide Greeley and the Corps a letter confirming when the performance criterion is met and that Larimer County's repair duties are complete. There are no performance criteria for any aquatic improvements and Larimer County has no obligation to make any additional improvements to the aquatic environment.

3.9. Permits



- (a) Greeley secured and will continue to serve as the permittee of all permits, including but not limited to the Regional General Permit 12, Nationwide Permit 13, Temporary Special Use Agreement for CDOW Properties issued by CPW, the Special Event Permit and Floodplain Development Permit issued by Larimer County.
- (b) Greeley will meet all permittee requirements, including but not limited to any reporting and extension requirements, and all other administrative responsibilities. Larimer County will have no permittee responsibilities.
- (c) All documents submitted to fulfill permittee responsibilities will be copied by Greeley to Larimer County.

4. ASSIGNMENT. The Parties may not assign this Agreement without prior written consent from the other Party.

5. NOTICE. All notices, demands, or other written communication required or permitted to be given by this Agreement shall be by electronic mail, hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the parties as follows:

If to Larimer County:

Larimer County Department of Natural Resources  
Attention: Jeffrey Boring, Resource Specialist  
1800 South County Road 31  
Loveland, CO 80537  
Telephone: 970-679-4569  
Fax: 970-679-4574  
Email: [boringjs@co.larimer.co.us](mailto:boringjs@co.larimer.co.us)

With a copy to:

Larimer County Attorney's Office  
Attention: Jeannine Haag, County Attorney  
224 Canyon Avenue, Suite 200  
Fort Collins, CO 80521  
Telephone: 970-498-7450  
Fax: 970-498-7430  
Email: [haagjs@co.larimer.co.us](mailto:haagjs@co.larimer.co.us)

If to Greeley:

City of Greeley Water and Sewer Department  
Attention: Eric Reckentine, Deputy Director of Water Resources  
1100 10th Street, 3rd Floor  
Greeley, CO 80631  
Telephone: 970-350-9815

Fax: 970-350-9805  
Email: [eric.reckentline@greeleygov.com](mailto:eric.reckentline@greeleygov.com)

With a copy to:

Greeley City Attorney's Office  
Attention: Doug Marek, City Attorney  
1100 10th Street, Suite 401  
Greeley, CO 80631  
Telephone: 970-350-9762  
Facsimile: 970-350-9805  
Email: [doug.marek@greeleygov.com](mailto:doug.marek@greeleygov.com)

6. NO WAIVER OF IMMUNITY. Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10-101, *et seq.*, or the Federal Tort Claims Act ("FTCA") 28 U.S.C. 2671, *et seq.*, as applicable, as now or hereafter amended nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement. Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the CGIA or the FTCA as applicable, as now or hereafter amended.
7. LIABILITY. Without waiving any immunities, rights, benefits, or protections under the Colorado Governmental Immunity Act, and subject to the limitations herein, each party, on behalf of its officials, employees, and agents, agrees that it will be responsible for losses, costs (including reasonable attorney's fees), demands, or actions arising out of or related to its own acts and omissions and the results thereof that flow from the performance of this Agreement.
8. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, except for conflicts of laws provisions. The forum for any dispute regarding this Agreement shall be in the Larimer County District Court, State of Colorado.
9. COMPLETE AGREEMENT. This Agreement consists of all the agreements, understandings, and promises between the Parties, and there are no agreements, understandings or promises between the Parties other than those set forth in this Agreement.
10. AMENDMENTS. Any amendments or modifications to this Agreement must be in writing and executed by all parties to be valid and binding.
11. BINDING EFFECT. This Agreement, when executed and delivered, shall bind the Parties and their successors and assigns.

12. SEVERABILITY. If any provision of this Agreement is invalidated by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date as set forth above.

THE CITY OF GREELEY, COLORADO

BOARD OF COUNTY COMMISSIONERS  
LARIMER COUNTY, COLORADO

By: \_\_\_\_\_  
Mayor

By:  \_\_\_\_\_  
Chair



ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By:  \_\_\_\_\_  
Deputy Clerk of the Board

APPROVED AS TO LEGAL FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By:  \_\_\_\_\_ 7-6-15  
County Attorney

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
City Manager

APPROVED AS TO AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
Director of Finance



**WATER & SEWER BOARD AGENDA** August 19, 2015

ENCLOSURE   X              NO ENCLOSURE     

ITEM NUMBER:            5

TITLE:                    ACTION: IGA WITH FORT COLLINS

RECOMMENDATION:      APPROVE IGA WITH FORT COLLINS AND  
RECOMMEND TO COUNCIL

**ADDITIONAL INFORMATION:**

The City of Greeley and the City of Fort Collins (Cities) have mutually agreed to separate the federal permitting process for the proposed enlargements of the two reservoirs, The City of Fort Collins is pursuing the enlargement of Halligan Reservoir, an existing reservoir located on the North Fork of the Cache la Poudre River; and The City of Greeley is pursuing the enlargement of Milton Seaman Reservoir, an existing reservoir located on the North Fork of the Cache la Poudre River downstream of Halligan Reservoir. In 2004 the Cities entered into an Intergovernmental Agreement (2004 IGA) that allowed cost sharing and combined the two projects into one cooperative project, the Halligan-Seaman Water Management Project. The Cities have since mutually agreed to and have received approval from the United States Army Corps of Engineers (“Corps”) to separate the pending section 404 permitting and NEPA evaluation process for each project. Now that the Halligan-Seaman Water Management Project is no longer in existence as a joint project of the Cities, the 2004 IGA is no longer desirable or necessary. This Agreement is intended to define the rights, obligations, and expectations of the Cities, and to establish the contractual framework pursuant to which the Cities will interact regarding each City’s separate efforts to enlarge its reservoir.

In May 2015, staff requested that the Water and Sewer Board approve the Intergovernmental Agreement with Fort Collins and recommend the same to City Council for approval, so long as the substance of Paragraph 22, Protection and Non-Disclosure of Confidential Information, remains substantially unchanged. During continued negotiation process with the City of Fort Collins in relation to Paragraph 22 an acceptable change to the non-disclosure provisions were negotiated. Staff is informing the Water & Sewer Board of the new provisions and recommends moving forward with the proposed language changes to Paragraph 22. Staff is requesting that the Water & Sewer Board approve the IGA and recommends the same to City Council.

## **INTERGOVERNMENTAL AGREEMENT**

This Agreement made and entered into on the date of execution shown on the signature pages, by and between the following Parties: the City of Fort Collins, Colorado, a home rule municipality (“Fort Collins”), and the City of Greeley, Colorado, a home rule municipality (“Greeley”) (also, together “Cities,” and individually “City”).

### **RECITALS**

WHEREAS, Fort Collins is pursuing the enlargement of Halligan Reservoir, an existing reservoir located on the North Fork of the Cache la Poudre River; and

WHEREAS, Greeley is pursuing the enlargement of Milton Seaman Reservoir, an existing reservoir located on the North Fork of the Cache la Poudre River downstream of Halligan Reservoir; and

WHEREAS, the federal permitting processes for the enlargements of the two reservoirs under Section 404 of the Clean Water Act, *see* 33 U.S.C. §1251 *et seq.* (“Section 404”) and the National Environmental Policy Act, *see* 42 U.S.C. §4321 *et seq.* (“NEPA”) were previously being addressed as a single, combined Halligan-Seaman Water Management Project and, associated therewith, the Cities executed the Intergovernmental Agreement: Halligan-Seaman Water Management Project, dated October 1, 2004 (“2004 IGA”); and

WHEREAS, the Cities have since mutually agreed to and have received approval from the United States Army Corps of Engineers (“Corps”) to separate the pending Section 404 permitting and NEPA evaluation process for each project; and

WHEREAS, the Cities are authorized to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of them pursuant to Article II, Section 16 of the Charter of the City of Fort Collins and Article I, Section 1-3 of the Charter of the City of Greeley and Title 2, Section 2.07.040 of the Municipal Code of the City of Greeley, and C.R.S. §29-1-203(1).

NOW THEREFORE, In consideration of the above-recited premises and the promises set forth below, the Cities agree as follows:

### **AGREEMENT**

1. **Recitals.** The foregoing recitals are incorporated herein as if restated in their entirety.
2. **Purpose.** This Agreement is intended to define the rights, obligations, and expectations of the Cities, and to establish the contractual framework pursuant to which the Cities will interact regarding each City’s separate efforts to enlarge its reservoir following the separation of the Halligan-Seaman Water Management Project. Nothing in this Agreement shall be interpreted as one City’s support for the other City’s proposed enlargement of its reservoir. Nothing in this Agreement shall prevent the Cities from entering into additional future agreements with each other and/or third parties to address specific elements of, or issues concerning their separate efforts to enlarge the two reservoirs and the operations thereof.



**3. Termination of the 2004 IGA.** Because the Cities have mutually agreed to separate the federal permitting process for the proposed enlargements of the two reservoirs, and because the Halligan-Seaman Water Management Project is no longer in existence as a joint project of the Cities, the 2004 IGA is no longer desirable or necessary. The 2004 IGA is therefore terminated and replaced in its entirety by this Agreement.

**4. Modeling.**

- a. Background re Previous Modeling. The pending federal permitting processes for the enlargements of the two reservoirs under Section 404 and NEPA and the regulations promulgated thereunder have required, and will in the future require, hydrologic modeling of the streamflow conditions within the Cache La Poudre River Basin as impacted by the proposed reservoir enlargements and alternatives. Pursuant to the 2004 IGA, the staff and consultants of the Cities worked together to complete the necessary models and to complete the necessary runs of the models for said pending federal permitting processes. Such models consist of various components, some of which are in the possession and control of Fort Collins, and some of which are in the possession and control of Greeley. Pursuant to the 2004 IGA, the staff and consultants of the Cities did not account for or charge each other for the costs related to such modeling for said pending federal permitting processes.
- b. Future Modeling. The Cities agree that the continuation of such efforts with respect to such modeling, as set forth herein, is in the best interests of the Cities and will provide for a fair and equitable allocation of the benefits and burdens of such modeling from the 2004 IGA through the termination of this Agreement.
- c. Modeling to be Performed by Fort Collins for Greeley.
  - i. *Final Alternatives Modeling.* Upon Greeley's request, Fort Collins agrees to work with Greeley to perform or complete the performance of a total of five (5) model runs for Greeley's set of final alternatives for the federal environmental impact statement, including drafts and revisions of and supplements thereto, for the enlargement of Milton Seaman Reservoir. Each model run shall consist of up to four (4) individual model simulations: a sizing model and three (3) models representing current, future, and cumulative conditions, as defined and directed by the Corps. The five (5) final alternatives are anticipated to include one (1) no action alternative, one (1) preferred action alternative and three (3) alternative actions. The modeling will, therefore, consist of one (1) model run consisting of up to four (4) individual model simulations ("Greeley Models") for each of the five (5) final alternatives chosen by the Corps for analysis in the federal environmental impact statement ("Greeley Alternatives"). The Greeley Models shall include, but are not limited to, modeling impacts and mitigation of the Greeley Alternatives and assisting in the preparation of any necessary responses, including supplemental analyses or sensitivity model runs, required pursuant to the Corps' quality assurance and quality control review of the Greeley Models. Subject to Paragraph 4.c.ii., the Greeley Models shall not

include, and Fort Collins shall not be obligated to perform, any additional modeling necessary for or resulting from a revision to Greeley's purpose of and need for the expansion of Milton Seaman Reservoir. Fort Collins will not charge Greeley for the costs associated with Fort Collins' work on the Greeley Models. Greeley shall provide Fort Collins with at least sixty (60) days advance notice of the need for the completion of any such Greeley Models.

- ii. *Revised Final Alternatives.* Notwithstanding the foregoing, and in accordance with Paragraph 4.c.i. above, if the Corps requires both Greeley and Fort Collins to revise the purpose of and need for their respective reservoir expansion projects and if a revision generates or produces new alternatives for both Cities that requires both Cities to perform new or additional modeling, then upon Greeley's request, Fort Collins agrees to work with Greeley to perform an additional five (5) model runs for Greeley's revised set of final alternatives. A revised set of final alternatives is anticipated to include one (1) no action alternative, one (1) preferred action alternative and up to three (3) additional or new alternative actions. Each model run shall consist of up to four (4) individual model simulations: a sizing model and three (3) models representing current, future, and cumulative conditions, as defined and directed by the Corps. The new or additional modeling will consist of one (1) model run with up to four (4) individual model simulations ("Additional Greeley Models") for each of the five (5) new or additional final alternatives chosen by the Corps for analysis in the federal environmental impact statement ("Revised Greeley Alternatives"). The Additional Greeley Models shall include, but are not limited to, modeling impacts and mitigation of the Revised Greeley Alternatives and assisting in the preparation of any necessary responses, including supplemental analyses or sensitivity model runs, required pursuant to the Corps' quality assurance and quality control review of the Additional Greeley Models. Fort Collins will not charge Greeley for the costs associated with Fort Collins' work on the Additional Greeley Models. Greeley shall provide Fort Collins with at least sixty (60) days advance notice of the need for the completion of any such Additional Greeley Models. If Fort Collins has performed the five (5) model runs for Greeley's set of final alternatives, in accordance with Paragraph 4.c.i. above and the Corps requires Greeley (and not Fort Collins) to revise the purpose of and need for its reservoir expansion project and if a revision generates or produces new alternatives that requires Greeley to perform new or additional modeling, then such modeling shall come under Paragraph 4.c.iii. If the Corps requires Greeley (and not Fort Collins) to revise the purpose of and need for its reservoir expansion project prior to Fort Collins performing the five (5) model runs in accordance with Paragraph 4.c.i. above, then Fort Collins performance of five (5) model runs for Greeley's set of final alternatives generated or produced by the revision shall come under Paragraph 4.c.i.
- iii. *Other Modeling.* If Greeley desires Fort Collins' assistance with modeling associated with the enlargement of Milton Seaman Reservoir in addition to the modeling identified in Paragraph 4.c.i. and 4.c.ii., Greeley may request the same and, if Fort Collins agrees at its discretion to perform such work, Fort

Collins shall be entitled to charge and invoice Greeley for the actual costs associated with said work, including all consulting and contractor fees and the time spent on such work by Fort Collins' employees (specifically excluding independent contractors and consultants) whose time shall not be charged at a rate greater than fifty dollars (\$50.00) per hour. Greeley shall provide Fort Collins with at least sixty (60) days advance notice of the need for the completion of any such modeling.

**d. Modeling to be Performed by Greeley for Fort Collins.**

- i. *Final Alternatives Modeling.* Upon Fort Collins' request, Greeley agrees to work with Fort Collins to perform or complete the performance of a total of five (5) model runs for Fort Collins' set of final alternatives for the federal environmental impact statement, including drafts and revisions of and supplements thereto, for the enlargement of Halligan Reservoir. Each model run shall consist of up to four (4) individual model simulations: a sizing model and three (3) models representing current, future, and cumulative conditions, as defined and directed by the Corps. The five (5) final alternatives are anticipated to include one (1) no action alternative, one (1) preferred action alternative and three (3) alternative actions. The modeling will, therefore, consist of one (1) model run consisting of up to four (4) individual simulations ("Fort Collins Models") for each of the five (5) final alternatives chosen by the Corps for analysis in the federal environmental impact statement ("Fort Collins Alternatives"). The Fort Collins Models shall include, but are not limited to, modeling impacts and mitigation of the Fort Collins Alternatives and assisting in the preparation of any necessary responses, including supplemental analyses or sensitivity model runs, required pursuant to the Corps' quality assurance and quality control review of the Fort Collins Models. Subject to Paragraph 4.d.ii., the Fort Collins Models shall not include, and Greeley shall not be obligated to perform, any additional modeling necessary for or resulting from a revision to Fort Collins' purpose of and need for the expansion of Halligan Reservoir. Greeley will not charge Fort Collins for the costs associated with Greeley's work on the Fort Collins Models. Fort Collins shall provide Greeley with at least sixty (60) days advance notice of the need for the completion of any such Fort Collins Models.
- ii. *Revised Final Alternatives.* Notwithstanding the foregoing, and in accordance with Paragraph 4.c.i. above, if the Corps requires both Greeley and Fort Collins to revise the purpose of and need for their respective reservoir expansion projects and if a revision generates or produces new alternatives for both Cities that requires both Cities to perform new or additional modeling, then upon Fort Collins' request, Greeley agrees to work with Fort Collins to perform an additional five (5) model runs for Fort Collins' revised set of final alternatives. A revised set of final alternatives is anticipated to include one (1) no action alternative, one (1) preferred action alternative and up to three (3) additional or new alternative actions. Each model run shall consist of up to four (4) individual model simulations: a sizing model and three (3) models representing

current, future, and cumulative conditions, as defined and directed by the Corps. The new or additional modeling will consist of one (1) model run with up to four (4) individual model simulations (“Additional Fort Collins Models”) for each of the five (5) new or additional final alternatives chosen by the Corps for analysis in the federal environmental impact statement (“Revised Fort Collins Alternatives”). The Additional Fort Collins Models shall include, but are not limited to, modeling impacts and mitigation of the Revised Fort Collins Alternatives and assisting in the preparation of any necessary responses, including supplemental analyses or sensitivity model runs, required pursuant to the Corps’ quality assurance and quality control review of the Additional Fort Collins Models. Greeley will not charge Fort Collins for the costs associated with Greeley’s work on the Additional Fort Collins Models. Fort Collins shall provide Greeley with at least sixty (60) days advance notice of the need for the completion of any such Additional Fort Collins Models. If the Corps requires Fort Collins (and not Greeley) to revise the purpose of and need for its reservoir expansion project and if a revision generates or produces new alternatives that requires Fort Collins to perform new or additional modeling, then such modeling shall come under Paragraph 4.c.iii.

- iii. *Other Modeling.* If Fort Collins’ desires Greeley’s assistance with modeling associated with the enlargement of Halligan Reservoir in addition to the modeling identified in Paragraph 4.d.i. and 4.d.ii., Fort Collins may request the same and, if Greeley agrees at its discretion to perform such work, Greeley shall be entitled to charge and invoice Fort Collins for the actual costs associated with said work, including all consulting and contractor fees and the time spent on such work by Greeley’s employees (specifically excluding independent contractors and consultants) whose time shall not be charged at a rate greater than fifty dollars (\$50.00) per hour. Fort Collins shall provide Greeley with at least sixty (60) days advance notice of the need for the completion of any such modeling.

## **5. Costs for Baseline Reports by Third-Party Consultants.**

- a. Background re Baseline Reports. The pending federal permitting processes for the enlargements of the two reservoirs under Section 404 and NEPA and the regulations promulgated thereunder require the preparation of certain reports by third-party consultants, as directed by the Corps, documenting the baseline conditions to which the proposed enlargements of the two reservoirs will be compared (“Baseline Reports”). Portions of the Baseline Reports have been prepared under the Cities’ contract with a third-party consultant, Western EcoSystems Technology, Inc. (“WEST”), dated August 18, 2005 and amended October 4, 2012 (“WEST Agreement”), related to the Halligan-Seaman Water Management Project, which is no longer in existence. Greeley has terminated the WEST Agreement, pursuant to Paragraph 5 of the same, on or about March 20, 2015. Greeley has paid all services rendered by WEST up and through January 31, 2015, and is under no obligation to make further payment to WEST pursuant thereto. Fort Collins has entered into a subsequent contract with WEST for the federal permitting process for the enlargement of Halligan Reservoir, dated on or

about February 10, 2015, whereas Greeley intends, at this time, to seek the use of another third-party consultant for the federal permitting process for the enlargement of Milton Seaman Reservoir. The Cities agree that third-party consultant WEST shall complete the Baseline Reports pursuant to that agreement by and between Fort Collins and WEST, and Fort Collins agrees that it will provide the Baseline Reports, including any drafts, to Greeley as soon as Fort Collins has received the same from WEST or the Corps.

- b. Costs re Baseline Reports. The Cities agree to split the costs for the Baseline Reports equally with Fort Collins and Greeley each being responsible for one half (1/2) of the cost of such Baseline Reports. A description of the outstanding Baseline Reports is contained in Exhibit A, attached hereto and incorporated herein. Upon being invoiced for work identified in Exhibit A, Fort Collins shall notify Greeley and provide documentation of the same in the form of invoices for one-half (1/2) of the cost. Greeley shall pay Fort Collins the amount due within thirty (30) days receipt of such invoice. The costs to be shared for Baseline Reports by third-party consultants under this Agreement shall be those costs incurred on or after February 1, 2015, for the items identified in Exhibit A.

**6. Other Work Product.**

- a. Background re Other Work. The pending federal permitting processes for the enlargements of the two reservoirs under Section 404 and NEPA, and the regulations promulgated thereunder, may also necessitate other work by third-party consultants, as directed by the Corps, other consultants working on behalf of each City, or staff of each City that may similarly be needed and/or useful to both Cities in said pending federal permitting processes (“Other Work Product”).
- b. Costs re Other Work. If a City (“Requesting City”) desires to rely upon or use certain Other Work Product in the federal permitting process for the enlargement of its reservoir that has been prepared by or for and paid by the other City, then the Requesting City may request the other City’s written permission to rely upon or use the Other Work Product. The other City in its discretion may deny the Requesting City’s use of or reliance upon the Other Work Product. If the Requesting City’s request is granted, then the other City shall be entitled to charge and invoice the Requesting City for up to one half (1/2) of the costs of such Other Work Product, including consulting and contractor fees, and shall provide invoices to the Requesting City to substantiate the costs of such Other Work Product. Any time spent on Other Work Product by City employees (specifically excluding independent contractors and consultants) that is charged under this provision shall not be charged at a rate greater than fifty dollars (\$50.00) per hour.

**7. Limitation on Direct Monetary Payments.** Exclusive of the payments made by Greeley to Fort Collins for the cost of the Baseline Reports, the total of any direct monetary payments made by one City to the other under this Agreement shall not exceed fifty thousand dollars (\$50,000.00).

**8. Fiscal Contingency.** Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Cities in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the appropriating City having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement, and the failure of either City to appropriate such funds shall be grounds for termination of this Agreement, by written notice, after ninety (90) days written notice if a City fails to appropriate the funds necessary for such obligation during that notice period. In the event that such funds are not appropriated by either City, the Cities further agree to meet as soon as practicable to discuss how to best proceed in the interests of both Cities. Provided, however, any termination in accordance with this Paragraph 8 will not terminate the Parties' obligations under Paragraph 22, which shall survive and shall be enforceable during the terms specified in Paragraph 11.

**9. Noncompliance.** If either City fails to comply with the provisions of this Agreement, the other City, after providing written notification to the noncomplying City, and upon the failure of the noncomplying City to achieve compliance within ninety (90) days, may seek all such remedies available under Colorado law.

**10. No Third-Party Beneficiaries.** This Agreement is entered into between the Cities for the purposes set forth herein. It is the intent of the Cities that they are the only beneficiaries of this Agreement and the Cities are only benefitted to the extent provided under the express terms and conditions of this Agreement.

**11. Term and Termination.** Unless extended or earlier terminated by the mutual consent and agreement of both Cities in writing or pursuant to Paragraph 8, this Agreement shall remain in effect from the last date it is signed by the Cities until after the Record of Decision on the permit application is issued and the Section 404 permit for the enlargement of the last of the two reservoirs is issued or denied and all administrative appeals and litigation regarding such decisions have terminated, and all periods within which such decisions may be challenged or appealed have expired, or for ten (10) years from date of execution, whichever is later; provided, however, that the right to require the return and destruction of claimed Confidential Information under Paragraph 22.f shall continue for six (6) months from such date or, in the case of the Greeley System Models and related information, three (3) years following such date. Notwithstanding the termination of this Agreement under this Paragraph 11, all obligations of the Cities not satisfied prior to such termination shall survive.

**12. Governing Law and Enforceability.** This Agreement shall be construed in accordance with the laws of the State of Colorado, insofar as any matter is not regulated by applicable laws of the United States. The Cities recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as their respective city charters and codes, impose certain legal constraints on each City, and the Cities intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

**13. Waiver.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement.

**14. Notices.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, or after the lapse of five (5) business days following mailing by certified mail-return receipt requested, postage prepaid, addressed as follows:

TO GREELEY: City of Greeley  
ATTN: City Manager  
1000 10th Street  
Greeley, Colorado 80631

With copy to: City Attorney  
1100 10th Street, Suite 401  
Greeley, Colorado 80631

TO FORT COLLINS: City Manager  
City Hall West  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580

With copy to: Fort Collins City Attorney  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580  
cdaggett@fcgov.com; epotyondy@fcgov.com

And: Fort Collins Utilities  
Attn: Executive Director  
700 Wood Street P.O. Box 580  
Fort Collins, Colorado 80522-0580

**15. Effect of Invalidity.** If a court of competent jurisdiction invalidates any portion of this Agreement as to either or both Cities, the remaining portions of this Agreement shall remain effective, except that any corresponding right or obligation of the other City shall be deemed invalid. If a court of competent jurisdiction invalidates the entire Agreement, the Cities shall take such action(s) necessary to achieve to the greatest extent possible the intent of this Agreement.

**16. Construction.** This Agreement shall be construed according to its fair meaning as it was prepared by both Cities. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

**17. Force Majeure.** Notwithstanding anything contained herein to the contrary, in the event and to the extent that fire, flood, lightning, vandalism, earthquake, natural catastrophe, explosion, accident, war, illegality, act of war, or any other cause beyond the reasonable control of either City, or strikes or labor troubles (whether or not within the power of either City to settle the same) prevents or delays performance by either City of its obligations under this Agreement, that Party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; and that City exercises due diligence in its efforts to resume performance within a reasonable period of time.

**18. Entire Agreement/Amendments.** This Agreement constitutes the entire agreement of the Cities and supersedes any prior agreement between the Cities regarding the planning and environmental review for permitting the enlargements of the two reservoirs. This Agreement binds and benefits the Cities and their respective survivors, heirs, successors, and assigns. Covenants or representations not contained in this Agreement shall not bind the Cities.

**19. Representations.** Each City represents to the other that it has the power and authority to enter into this Agreement and the individual signing below on behalf of that City has the authority to execute this Agreement on its behalf and legally bind that City.

**20. Assignment.** Neither City may assign any rights or delegate any duties under this Agreement without the written consent of the other City.

**21. No Interest in Water Rights or Storage.** By virtue of this Agreement, Fort Collins obtains no right or title, legal or equitable, in any of Greeley's existing or future water rights, or in Milton Seaman Reservoir or any of Greeley's other facilities as they exist today or as they may be modified in the future. By virtue of this Agreement, Greeley obtains no right or title, legal or equitable, in any of Fort Collins' existing or future water rights, or in Halligan Reservoir or any of Fort Collins' other facilities as they exist today or as they may be modified in the future.

**22. Protection and Non-Disclosure of Confidential Information.**

- a. The City receiving the Baseline Reports or requesting assistance with modeling or Other Work Product under this Agreement (the "Receiving City") understands and acknowledges that the other City (the "Providing City") may provide or has provided information to the Receiving City that may be claimed as confidential information of the Providing City for the purposes of this Agreement and will be subject to the terms and conditions of this Paragraph 22 ("Confidential Information").
- b. If the Providing City intends to claim that certain information is confidential under this Agreement and desires to have the Receiving City take certain precautions under this Paragraph 22 with such claimed Confidential Information, within three (3) calendar days of when the Providing City provides the such claimed Confidential Information to the Receiving City under this Agreement, or within thirty (30) calendar days of the effective date of this Agreement for any claimed Confidential Information provided to the Receiving City prior to the effective date of this Agreement, the Providing City shall provide written notice to the Receiving City containing the following: (i) an identification of each piece of information that is claimed to be Confidential Information; (ii) for each piece of such information, an identification of the documents, files, or other forms of communication provided to the Receiving City in which the claimed Confidential Information is located; and (iii) for each piece of such information, a brief statement identifying the basis for which the Providing City may claim the information to be confidential. Notwithstanding the foregoing, the Greeley System Model, including the MODSIM network and associated input and output processors, that analyzes Greeley's water demand, supply, and delivery system is and shall be considered Confidential Information and kept confidential in accordance with this Paragraph 22, without the need for further notice under this Paragraph 22.



- c.** With respect to the claimed Confidential Information identified pursuant to Paragraph 22.b, the Receiving City hereby agrees: (i) to hold the claimed Confidential Information in confidence and to take all reasonable precautions to protect such Confidential Information from inadvertent or accidental disclosure (including, without limitation, all precautions the Receiving City employs with respect to its own confidential materials); (ii) to not disclose any such claimed Confidential Information to any third person, except pursuant to Paragraph 22.e and to the Receiving City's third-party contractor with the Corps, the Receiving City's consultants and contractors that are performing work on the federal permitting process for the enlargement of the Receiving City's reservoir; and (iii) to not use the claimed Confidential Information for any purpose except as permitted under the terms of this Agreement. The Providing City shall seek a nondisclosure or similar agreement with the Receiving City's consultants and contractors that are performing work on the federal permitting process for the enlargement of the Receiving City's reservoir and shall use reasonable efforts to obtain a nondisclosure or similar agreement with the Receiving City's third-party contractor with the Corps.
- d.** The obligations of the Receiving City with respect to claimed Confidential Information under this Paragraph 22 shall not apply to: (i) claimed Confidential Information beginning six (6) months after termination of this Agreement pursuant to Paragraph 11, except that the Greeley System Models and related information may not be released until three years after the termination of this Agreement pursuant to Paragraph 11, or (ii) Confidential Information that the Receiving City can document: (A) is or has become (through no improper action or inaction by the Receiving City or any affiliate, agent, consultant or employee) generally available to the public; (B) was in its possession prior to receipt from the Providing City under Paragraph 22.b, except to the extent that such information was unlawfully appropriated by the Receiving City; (C) was independently developed by the Receiving City without use of any claimed Confidential Information of the Providing City under Paragraph 22.b; or (D) was disclosed pursuant to the requirements of law, subject to Paragraph 22.e.
- e.** Nothing herein shall affect the obligations of the Receiving City to either make disclosures or preserve the confidentiality of claimed Confidential Information to the extent required by law or court order, including, but not limited to, requirements under the Colorado Open Records Act, CRS §24-72-201 et seq., and other Colorado and federal statutes, court rules, and administrative rules and regulations. If the Receiving City receives a request under law for the Providing City's claimed Confidential Information, or if the Receiving City would otherwise be required to disclose the Providing City's claimed Confidential Information pursuant to law, the Receiving City shall notify the Providing City as soon as practicable of the request or pending disclosure, and in such event, upon the request of the Receiving City, the Providing City may take such timely action as may be required to obtain a declaratory judgment as to the confidential status of the Confidential Information, and, if the Providing City elects not to do so, then the Receiving City's obligation to preserve that Confidential Information shall have been waived hereunder, except as otherwise provided by law.

- f. The Providing City shall have the right to require the return and destruction of claimed Confidential Information in the possession of the Receiving City as set forth in this paragraph. Such right shall exist from the effective date of this Agreement through six (6) months after the date of termination of this Agreement pursuant to Paragraph 11 or, for Greeley’s System Models, three (3) years after the termination of the Agreement. Upon the written request by the Providing City, the Receiving City will, as soon as practicable, return to the Providing City all original paper versions of documents, files, and media containing the claimed Confidential Information, and destroy or erase all paper copies and electronic versions of documents, files, and media containing the claimed Confidential Information. If claimed Confidential Information has been copied or transcribed into another document, such documents will be destroyed, erased, or modified to remove the claimed Confidential Information.

**23. No Warranty.** Each City acknowledges and confirms to the other City that no representation or warranty, express or implied, is or will be made, and no responsibility or liability is or will be accepted by either City, or by any of its respective directors, officers, employees, agents or advisers, as to, or in relation to, the accuracy or completeness of any Confidential Information, as defined in Paragraph 22, made available to the other City or its advisers; it is responsible for making its own evaluation of such Confidential Information.

**24. No Waiver of Immunity.** Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act (“CGIA”), CRS §24-10-101, et seq., or the Federal Tort Claims Act (“FTCA”) 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement. Liability for claims for injuries to persons or property arising from the negligence of the Cities, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the CGIA or the FTCA as applicable, as now or hereafter amended.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]**

**THE CITY OF FORT COLLINS, COLORADO, a  
Colorado municipal corporation**

By: \_\_\_\_\_  
Darin A. Atteberry, City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney's Office

**THE CITY OF GREELEY, COLORADO,  
a Colorado municipal corporation,**

By: \_\_\_\_\_  
Thomas E. Norton, Mayor

ATTEST:

By: \_\_\_\_\_  
Betsy D. Holder, City Clerk

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
Roy H. Otto, City Manager

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Doug Marek, City Attorney

AS TO AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
Director of Finance

RECOMMENDED:

By: \_\_\_\_\_  
Burt Knight, Director of Water and Sewer

By: \_\_\_\_\_  
Chairman, Water and Sewer Board

**EXHIBIT A**  
**to**  
**INTERGOVERNMENTAL AGREEMENT**  
**(Baseline Reports)**

As described in this agreement, the City of Greeley agrees to continue paying one half of the invoiced cost for the following four in-process baseline reports.

<b>Baseline Report:</b>	<b>Author:</b>
North Fork Baseline Wetland and Riparian Resources Report	Western EcoSystems Technology
North Fork Baseline Sediment/Transport Geomorphology Report	Anderson Consulting Engineers
North Fork Baseline Aquatic Technical Report	GEI
North Fork Baseline Water Quality Report	CDM Smith

**WATER & SEWER BOARD AGENDA** AUGUST 19, 2015

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           6

TITLE:                   LEGAL REPORT

POSSIBLE ACTION:       STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION:      INFORMATION ONLY

ADDITIONAL INFORMATION:

**WATER & SEWER BOARD AGENDA AUGUST 19, 2015**

ENCLOSURE \_\_\_\_\_ NO ENCLOSURE  X

ITEM NUMBER: 7

TITLE: REPORT: NORTHERN INTEGRATED SUPPLY PROJECT – SUPPLEMENTAL DRAFT OF THE ENVIRONMENTAL IMPACT STATEMENT

RECOMMENDATION: INFORMATION ONLY

**ADDITIONAL INFORMATION:**

Staff will provide a report to the Water & Sewer Board on the Northern Integrated Supply Project. In general, the Northern Colorado Water Conservancy District (Northern) provides water and operates infrastructure that serves numerous communities along the Front Range of Colorado. Northern, acting on behalf of 15 municipal and rural domestic water providers (Participants), requested a Clean Water Act Section 404 Permit from the Corps' Omaha District Regulatory Branch to undertake the Northern Integrated Supply Project (NISP). The proposed project would provide 40,000 acre-feet of new reliable water supply, which would meet a portion of the Participants' future water supply needs. The project proposes the construction of two new reservoirs, Glade and Galetton, with capacities of 170,000 and 45,624 acre-feet, respectively. The Corps is the lead federal agency and has been preparing an EIS since 2004 to analyze environmental effects.

The Corps published a Draft Environmental Impact Statement (DEIS) for NISP on April 30, 2008 for public comment. Substantial comments were received during three public hearings held for the DEIS as well as during the comment period. The Corps determined that additional analysis was required and that the purposes of the National Environmental Policy Act (NEPA) would be furthered through the issuance of a Supplemental Draft Environmental Impact Statement (SDEIS). The Corps published a SDEIS for NISP on June 19, 2015 for public comment.

Staff will report to the Water & Sewer Board a general description of the NISP including a description of the NEPA process, the reasons for a SDEIS, a description of the proposed preferred project and the four project alternatives analyzed by the Corps.

**WATER & SEWER BOARD AGENDA** AUGUST 19, 2015

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           8

TITLE:                   EXECUTIVE SESSION

RECOMMENDATION:    INFORMATION ONLY

ADDITIONAL INFORMATION:



**WATER & SEWER BOARD AGENDA** AUGUST 19, 2015

ENCLOSURE \_\_\_\_\_ NO ENCLOSURE   X  

ITEM NUMBER: 9

TITLE: ACTION: AUTHORIZE STAFF AND COUNSEL TO FILE A WATER COURT APPLICATION TO CHANGE THE ROCKWELL RESERVOIR CONDITIONAL WATER RIGHTS

RECOMMENDATION: AUTHORIZE STAFF AND COUNSEL TO FILE A WATER COURT APPLICATION TO CHANGE THE ROCKWELL RESERVOIR CONDITIONAL STORAGE RIGHT AND ASSOCIATED APPROPRIATIVE RIGHTS OF EXCHANGE

ADDITIONAL INFORMATION:

Greeley owns a conditional storage right in the amount of 4,900 acre feet, originally decreed to the Rockwell Reservoir in Case No. W-8675. The most recent finding of diligence on this conditional right was awarded in Case No. 12CW191. Greeley also owns certain conditional appropriative rights of exchange originally decreed to the Rockwell Reservoir from a number of other structures in Case No. W-9385-78. The most recent finding of diligence on these conditional exchange rights was also awarded in Case No. 12CW191.

The proposed water court application would designate Milton Seaman Reservoir as an alternate place of storage for the Rockwell Reservoir conditional storage right. The application would also add Milton Seaman Reservoir as an exchange-to point for the associated conditional appropriative rights of exchange.

**WATER & SEWER BOARD AGENDA AUGUST 19, 2015**

ENCLOSURE   X  

NO ENCLOSURE     

ITEM NUMBER:           10

TITLE:                    INFORMATION: CASH-IN-LIEU UPDATE

RECOMMENDATION:

ADDITIONAL INFORMATION:

The City of Greeley Municipal Code requires the Water & Sewer Board to set the Cash-in-Lieu (CIL) rate. Staff has been reviewing the current Cash-in-Lieu policy as requested by City Council. A stakeholder group was invited to participate in this review. The stakeholder group includes interested parties such as realtors, developers and other business interests. The City hired BBC Research and Consulting (BBC) to assist in the development of a detailed report that includes recommendations on CIL. BBC's initial final report was reviewed with the stakeholder group July 21, 2015. Staff has proposed to submit the BBC report and stakeholder comments to City Council October 13<sup>th</sup> followed by a presentation to the Water & Sewer Board October 21<sup>st</sup>. The presentation to the Water & Sewer Board will include the stakeholder and City Council comments for consideration.



# Evaluation of Water Dedication and Cash-in-Lieu Requirements

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City of Greeley



DRAFT REPORT

**Draft Report**

June 2015

# **Evaluation of Water Dedication and Cash-in-Lieu Requirements**

**Prepared for**  
City of Greeley

**Prepared by**  
BBC Research & Consulting  
1999 Broadway, Suite 2200  
Denver, Colorado 80202-9750  
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# Executive Summary

Greeley's residential water dedication and cash-in-lieu requirements have come under scrutiny from local developers, realtors and bankers during the past few years for at least two reasons. New development has increasingly shifted to dryland properties – forcing developers to obtain and dedicate water from other sources or pay the cash-in-lieu equivalent value to Greeley. At the same time, there has been an extraordinary increase in the market price for Colorado-Big Thompson (C-BT) units over the past three years.

This study includes an examination of similar policies among the other 21 fastest growing communities in the Northern Front Range. The volume of water that Greeley requires from residential developers (water dedication) is very close to the average across the region. The cost to developers of approximately \$25,000 per home is above average among the Northern Front Range communities (about \$20,000 per home). When tap and plant investment fees are also included in the comparison, Greeley's combined costs of \$36,271 per home for obtaining water service are also higher than the average (about \$28,900 per home) across the region.

While the basic elements of Greeley's water dedication and cash-in-lieu (CIL) policies are consistent with the policies in place among the other fast growing communities in Northern Colorado, the costs imposed by these policies do represent a significant cost for developers (and ultimately new home buyers). Greeley's combined water dedication, tap and plant investment fees represent almost 13 percent of the cost of a new home — based on the current average price of about \$285,000 for newly constructed homes in Greeley.

The primary culprit in the current high cost for water dedication (or cash-in-lieu) is the volatile and rapidly escalating price for C-BT units. Eventually, BBC believes Greeley (and other northern Colorado municipalities) will need to decouple their water dedication and cash-in-lieu policies from the C-BT market. While there are significant reasons why Greeley may not be ready to decouple these policies from C-BT at the present time, BBC believes there are several potential modifications to the current policies that are worthy of consideration.

BBC recommends that Greeley consider changing the cost basis for its cash-in-lieu requirements from the current price of C-BT to the average price over the most recent three year period; accept shares in the North Poudre Irrigation Company for water dedication; encourage a pilot program for low water use developments (with lower water dedication requirements); clarify that the water dedication requirement should be applied to the gross developable area, not the gross platted area for new developments; evaluate the water dedication requirements for non-residential developments; and prepare to convert to a primarily cash-in-lieu system in the future. Further detail regarding each of these recommendations, including an assessment of their advantages and disadvantages, is provided in Section IV of this report.

# SECTION I.

## Introduction

In December 2014, the City of Greeley retained BBC Research & Consulting (BBC) to evaluate the water dedication and cash-in-lieu requirements the City imposes on new residential development within its service area. Earlier in 2014, Greeley had sponsored a separate study of the broader range of impact fees assessed against new development to pay for demands on other city services.<sup>1</sup> However, water dedication and cash-in-lieu requirements were not addressed in that previous impact fee study.

Greeley's water dedication and cash-in-lieu requirements have come under particular scrutiny from local developers, realtors and bankers during the past few years for at least two reasons. Historically, most of the new residential development in Greeley had occurred on properties that were formerly irrigated farms, and developers were able to dedicate their properties' water rights from the Greeley-Loveland Irrigation Company or Greeley Irrigation Company (No. 3) to satisfy Greeley's water dedication requirements. Relatively few of these undeveloped irrigated farms remain in close proximity to Greeley, and new development has increasingly shifted to dryland properties – forcing developers to obtain and dedicate water from other sources or pay the cash-in-lieu equivalent value to Greeley. At the same time, there has been an extraordinary increase in the market price for Colorado-Big Thompson (C-BT) units over the past three years (see Figure III-5 later in this report). C-BT units are the primary option for dryland farm developers that need to acquire and dedicate water to Greeley, and the price of these units also provides the basis for calculating the cost for developers that pay cash-in-lieu of dedicating water to the City.

During the first five months of 2015, BBC examined Greeley's water dedication and cash-in-lieu requirements and evaluated potential alternatives or modifications to Greeley's current policies. This work included examination of similar policies among the other 21 fastest growing communities in the Northern Front Range, described in Section II, and analysis of other relevant data as described in Section III. BBC also participated in three meetings with local stakeholders from the development, real estate and financing industries and a number of meetings with staff from the City of Greeley.

The final section of this report provides a summary of the key findings from BBC's analysis and recommendations for consideration by the City of Greeley and the Greeley Water and Sewer Board.

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<sup>1</sup> See *Impact Fee Study prepared for the City of Greeley*. Duncan Associates. December 2014.

## **SECTION II.**

# **Comparison of Greeley's Current Requirements with Other Water Providers in the Region**

### **Greeley Water Dedication/Cash-in-Lieu Requirements**

Greeley currently requires new residential developments to dedicate a total of three acre-feet of water to the City for each acre of the proposed development. While properties that were historically irrigated with water supplies from the Greeley-Loveland Irrigation Company or Greeley Irrigation Company (No. 3) can use those historic rights for water dedication, dryland properties (or properties irrigated with other native flow water supplies that cannot be readily used by Greeley's water treatment plants) are required to dedicate C-BT units to Greeley. For purposes of calculating the water dedication requirement, Greeley assumes an average yield of 0.75 acre-feet per C-BT unit. Consequently, new residential developments that dedicate C-BT units to Greeley need to dedicate four units per acre in the proposed development (4 units x 0.75 acre-feet per unit = 3 acre-feet).

Up to the present, Greeley's policies have focused on receiving actual water supplies from new developers. However, small developments are allowed to provide the City with the cash equivalent of the cost of purchasing C-BT units. Greeley recently raised the threshold under which it would accept cash-in-lieu of actual water supplies from six acre-feet to eight acre-feet. The Greeley Water and Sewer Board also has the authority to consider cash-in-lieu of water supply for larger developments.

For small developments that choose to provide cash-in-lieu of actual water supplies, Greeley calculates the cash requirements on the basis of the current price of C-BT units. As of early 2015, C-BT units were trading for approximately \$25,000 per unit. Based on the requirement of four C-BT units per acre (described previously), this corresponds to a current cash-in-lieu requirement of \$100,000 per acre for residential development. Based on the average lot size of new homes developed in Greeley since 2003 of a little less than 0.20 acres (8,000 square feet), new developments typically include about four homes per acre (with the remaining land area being used for roads and easements). Consequently, Greeley's cash-in-lieu requirement currently corresponds to an average cost of about \$25,000 per new home.

### **Comparisons with Other Communities in the Northern Front Range**

To put Greeley's current requirements in context, BBC gathered similar information from 21 other water providers in northern Colorado. The comparable providers were selected based on three criteria:

- BBC included all of the communities located in the Northern Front Range that were examined in the preceding, broader impact fee study in 2014. Because water dedication and



cash-in-lieu requirements are best compared across communities relying on similar water supplies, we did not include a few communities from that previous impact fee study that rely on water supplies from other regions (e.g. Thornton and Pueblo).

- BBC also included all of the participants in the proposed Northern Integrated Supply Project (NISP), except those located in Morgan County. The NISP participants encompass most of the fastest growing communities in Northern Colorado. However, the two participants in Morgan County have not experienced the growth pressures faced by the more westerly participants, or by the City of Greeley.
- Finally, BBC reviewed recent population estimates from the Colorado State Demography Office to identify other fast growing communities in the Northern Front Range. These data indicate that 13 cities (including Greeley) within the area comprised of Weld County, Larimer County, Boulder County and Broomfield County experienced population increases of 500 or more residents between 2010 and 2013. All but two of those cities were either among the comparable cities in the previous impact fee study or among the NISP participants already included. However, this criterion added Louisville and Johnstown to the list for this study.

Together with Greeley, the 20 other communities (21 other water providers)<sup>1</sup> included in BBC’s research accounted for 90 percent of the population growth that occurred in Northern Colorado from 2010 through 2013. The list of communities included in this study is shown in Figure II-1.

**Figure II-1  
Northern Front Range Communities Included in Comparables Analysis**

Included in Impact Fee Study	Other Fast Growing Communities	
Boulder	Central Weld Co. WD*	Frederick*
Broomfield	Dacono*	Lafayette*
Longmont	Eaton*	Left Hand WD*
Loveland	Erie*	Severance*
Fort Collins (FCLWD)*	Evans*	Johnstown
Fort Collins (Utilities)	Firestone*	Louisville
Windsor*	Ft. Lupton*	N. Weld Co. WD

Note: \*NISP Participant

**Methodology.** The BBC study team initially gathered published information from official websites regarding water dedication and/or cash-in-lieu requirements for each of the comparable water providers. We then contacted each community, as necessary, to fill in information gaps and resolve detailed questions or seeming inconsistencies in the published information.

<sup>1</sup> The comparables list included two water providers serving development in Fort Collins. Fort Collins Utilities, which serves central Fort Collins, and Fort Collins-Loveland Water District which serves faster growing areas in southern Fort Collins.

The 22 water providers included in this study (including Greeley) have a variety of different methods for determining the amount of water (or cash) required of new developments. Some, like Greeley, base their requirements on water use per acre. Others base their requirements on other factors, such as tap sizes, number of dwelling units, or even specific characteristics of new homes such as their lot size or irrigable area.

Given the varied approaches used by the different communities, to achieve an “apples to apples” comparison, the study team needed to identify a specific set of characteristics for a hypothetical new development, and then “priced” the requirements for that hypothetical development if it were located within the service area of each of the 22 water providers. Since an important focus of our study was on cash-in-lieu requirements, and Greeley has traditionally limited the cash-in-lieu option to small developments, we assumed the following characteristics for the hypothetical development:

- Two acre total development area
- Average lot size of 0.20 acres (8,000 square feet)
- Four homes per acre (eight in total)
- ¾” tap size for each new home.<sup>2</sup>

For most of the communities, the calculation of both the water dedication and the cash-in-lieu requirement was relatively straightforward based on the assumed characteristics of the hypothetical development. A few of the comparable communities, however, only allow water dedication (no cash-in-lieu alternative) or require a combination of water and cash. In order to develop a cash equivalent cost for these communities, BBC priced their water dedication requirement based on the current price of C-BT units – since all of the comparable communities that take water dedication accept C-BT for that purpose.

**Policy types.** Figure II-2 displays the prevalence of five different types of water dedication/cash-in-lieu policies among the 22 communities (including Greeley). The largest number of water providers (nine, including Greeley) would accept either water or cash for the hypothetical development described previously. More specifically, this group includes Greeley, Evans, Fort Collins Utilities, Fort Lupton, Frederick, Lafayette, Left Hand Water District, Longmont and Severance.

The second most common type of policy is a cash only approach. Four of the water providers in this study – Broomfield, Erie, Fort Collins-Loveland Water District and North Weld County Water District – require developers to bring cash rather than provide water supplies.

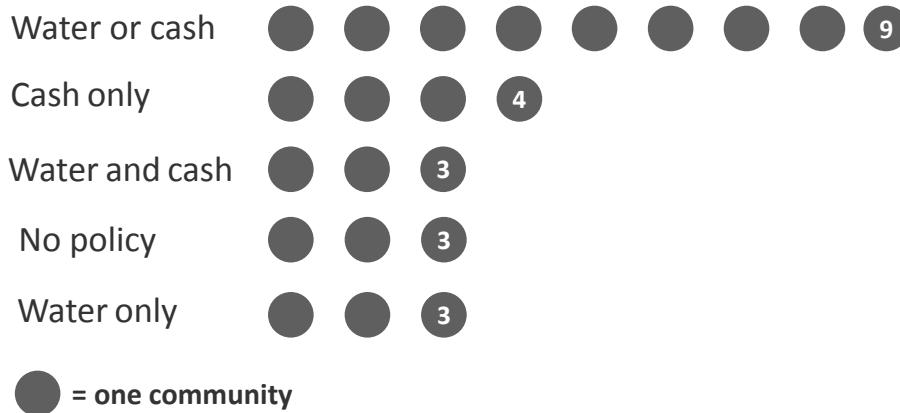
Three communities – Firestone, Loveland and Windsor—require developers to bring a mix of water supplies and cash. Three other communities – Dacono, Eaton and Johnstown – have water

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<sup>2</sup> Most new homes in Greeley in recent years have been served with ¾” taps. The study team did make one exception to this tap size assumption, for the City of Dacono. In Dacono, homes with a ¾” tap are subject to much larger water dedication requirements than homes with a 5/8” tap. Perhaps for this reason, most new homes in Dacono are being constructed with 5/8” taps.

only policies without a cash equivalent alternative. Finally, three of the comparable water providers – Boulder, Central Weld County Water District and Louisville – do not have water dedication or cash-in-lieu requirements. As discussed later, these providers compensate by levying higher plant investment fees and tap fees on new development.

**Figure II-2.**  
**Number of Communities by Policy Type**



Source: BBC Research & Consulting

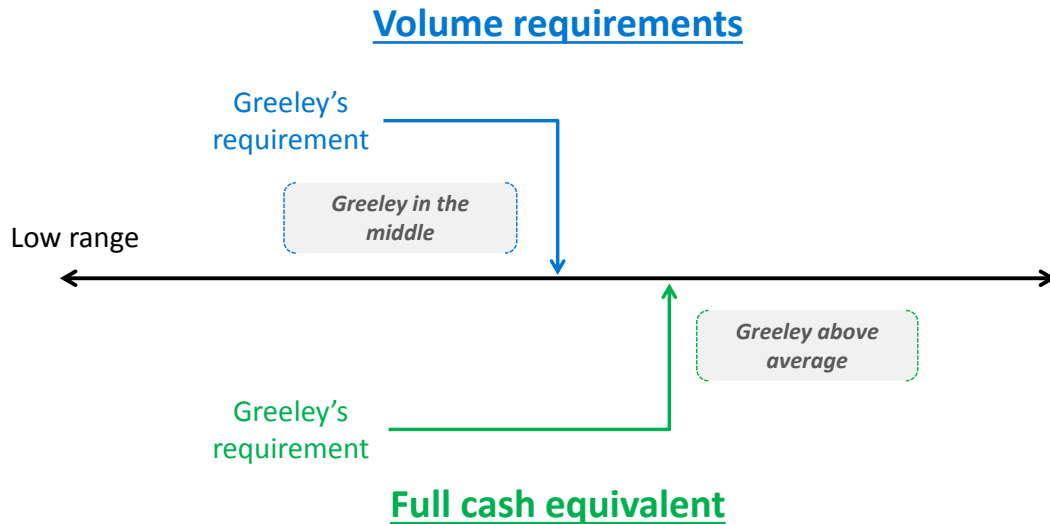
**Other policy elements.** A few other aspects of the water dedication and cash-in-lieu requirements among the varied communities are worthy of note. Among the 15 water providers that take raw water dedications from developers, all will accept C-BT units for that purpose. Seven of these fifteen providers (including Greeley) will also consider other, native supply sources – though they typically consider native supplies on a case-by-case basis.

For the 16 providers that will take cash-in-lieu of raw water dedication (or that specifically require cash from developers), there is considerable variation in the cash requirement. Differences in the amount of cash that developers must provide stem primarily from four factors:

- The basis and methods of their cost calculations;
- Differences in the amount of water new developments are assumed to require;
- Differences in the assumed yield from C-BT units; and
- Differences in the assumed price or value of C-BT.

**How Greeley compares to its peers.** The two most fundamental aspects of the comparison among the regional water providers are in terms of the amount of water required for the hypothetical development scenario described earlier, and the cash equivalent value of the water dedication and/or cash-in-lieu requirements. Figure II-3 provides a visual depiction of how Greeley compares with the other 21 water providers on both of these metrics.

**Figure II-3.**  
**Visual Comparison of Volume and Full Cash Equivalent Requirements among the Providers**



Source: BBC Research & Consulting

In terms of the volume of water required for dedication, the six acre-feet that Greeley would require for the hypothetical development exactly matches the median among the 22 providers included in this study and is slightly higher than the average of 5.9 acre-feet. The highest volume requirement is for the Left Hand Water District, which would require 8.4 acre-feet for the hypothetical development. The lowest volume requirement is within the North Weld County Water District, which would require only 2.8 acre-feet for the hypothetical development.

In terms of the full cash equivalent cost to a developer, Greeley's cost of \$200,000 for the hypothetical development (or \$25,000 per home for each of the eight homes) is above average among the Northern Front Range communities. The average full cash equivalent cost across all of the communities is \$160,183 (or about \$20,000 per home), while the median is higher at \$188,000 (or about \$23,500 per home). The full cash equivalent cost exceeds \$30,000 per new home in two of the 22 communities (Eaton and Johnstown), but is \$10,000 or less in six of the 22 communities (Evans, Fort Collins Utilities, Fort Lupton, Lafayette, Longmont and North Weld County Water District).

Many of the lowest cost water providers (such as Fort Collins Utilities, Longmont and Lafayette), have less remaining growth potential than Greeley and less need to acquire new water supplies in increasingly competitive markets. If Fort Collins Utilities, Longmont and Lafayette were removed from the analysis, the average cost per new home for water dedication/cash-in-lieu among the 19 remaining, faster growing communities would be \$23,300 – about seven percent less than the \$25,000 cost in Greeley.

Figure II-4 provides a more complete summary of the results from the comparables analysis. Additional detail regarding the specifics of each water provider's water dedication and cash-in-lieu requirements is provided in Appendix A at the end of this report.

**Figure II-4.  
Summary of Water Dedication Comparables Research**

Water Dedication (Cash-in-Lieu) Requirements: Small Residential Developments in Northern Colorado*									
Type of Policy	Details on policy	Volume Required		Acceptable Sources		Cash Equivalent Value		Date	
		Development Scenario*	Acre-feet/Acre	C-BT	Other	Development Scenario*	Cost per Home		
Johnstown	Water only	5.6	2.8	✓	✓	\$280,000	\$35,000	Mar-15	
Eaton	Water only	6.8	3.4	✓	✓	\$242,857	\$30,357	Mar-15	
Windsor	Mixed requirements	50% water, 50% cash	6.0	3.0	✓		\$228,000	\$28,500	Feb-15
Left Hand WD	Water or Cash in Lieu	8.4	4.2	✓	✓	\$222,600	\$27,825	Dec-15	
Frederick	Water or Cash in Lieu	6.0	3.0	✓		\$220,000	\$27,500	Mar-15	
Firestone	Mixed requirements	75% water, 25% cash	8.0	4.0	✓		\$208,000	\$26,000	Jan-15
Dacono**	Water only	8.0	4.0	✓		\$200,000	\$25,000	Feb-15	
<b>Greeley</b>	<b>Water or Cash in Lieu</b>	<b>6.0</b>	<b>3.0</b>	<b>✓</b>	<b>✓</b>	<b>\$200,000</b>	<b>\$25,000</b>	<b>Mar-15</b>	
Severance	Water or Cash in Lieu	5.6	2.8	✓		\$200,000	\$25,000	Mar-15	
FCLWD	Cash only	8.0	4.0			\$188,000	\$23,500	Oct-14	
Broomfield	Cash only	4.0	2.0			\$179,600	\$22,450	Mar-15	
Loveland	Mixed requirements	Minimum 50% cash or CBT	5.0	2.5	✓	✓	\$132,300	\$16,538	Nov-14
Erie	Cash only	4.0	2.0			\$102,800	\$12,850	Mar-15	
Evans	Water or Cash in Lieu	3.6	1.8	✓	✓	\$91,000	\$11,375	Apr-15	
Fort Lupton	Water or Cash in Lieu	5.6	2.8	✓		\$80,000	\$10,000	Mar-15	
N. Weld Co WD	Cash only	2.8	1.4			\$80,000	\$10,000	Mar-15	
Lafayette	Water or Cash in Lieu	5.6	2.8	✓		\$75,600	\$9,450	Jan-15	
Longmont	Water or Cash in Lieu	6.0	3.0	✓	✓	\$64,800	\$8,100	Dec-14	
Fort Collins Utilities	Water or Cash in Lieu	7.4	3.7	✓	✓	\$47,923	\$5,990	15-Jan	
Louisville	None	N/A	N/A			N/A	N/A	Mar-15	
Boulder	None	N/A	N/A			N/A	N/A	Mar-15	
Central Weld County WD	None	If water provided, deducted from tap fees	N/A	N/A			N/A	N/A	Mar-15
<b>Descriptive Statistics</b>		<b>Development Scenario</b>	<b>Acre-feet/Acre</b>			<b>Development Scenario</b>	<b>Cost per Home</b>		
Average		5.9	3.0			\$160,183	\$20,023		
Median		6.0	3.0			\$188,000	\$23,500		

Note: \*Based on hypothetical two acre development. Assumes 4 lots per acre, average lot size of 0.20 acres (8,000 square feet), 3/4" taps.

\*\*Dacono is based on 5/8" tap because that is the most common for residential development in the city.

Source: BBC Research & Consulting

**Further comparison including tap and plant investment fees.** Although the focus of this study is on Greeley's water dedication and cash-in-lieu requirements for residential development, those requirements are not the only water-related charges for new homes in Greeley (or in the comparable communities). A more complete comparison of the costs of obtaining water service for new homes also requires consideration of tap fees and water-related plant investment fees across the 22 northern Colorado communities. (Ongoing charges for water use after service is established – water rates – also vary by community. There may be substantial differences in the extent to the different communities in Northern Colorado are recovering capital costs through customer rates, but operating water rates were outside the scope of this study). In Greeley, new homes with ¾" taps currently pay a combined total of \$11,271 for tap and plant investment fees. This amount is about equivalent to the average among the 22 communities (\$11,598) and slightly higher than the median amount across the communities (\$10,844). Three communities levy combined tap and plant investment fees of more than \$20,000 per new home. These are the same three communities – Boulder, Central Weld County Water District and Louisville – that do not require developers to pay water dedication or cash-in-lieu. At the other end of the spectrum, nine of the 22 communities levy combined tap and plant investments fees of less than \$10,000 for new homes.

Figure II-5 provides a graphical depiction of the relative combined costs for water dedication/cash-in-lieu, tap and plant investment fees in Greeley, relative to the other communities included in this study. Greeley's combined costs per home are \$36,271, which is lower than seven of the 21 other communities, but higher than 14 of the communities.

**Figure II-5.  
Relative Cost of  
Water Service for  
New Homes in  
Greeley Compared  
to 21 Other  
Northern Front  
Range Communities  
(Includes Water  
Dedication/Cash-in-  
Lieu Requirements,  
Plant Investment  
Fees and Tap Fees)**

Source:  
BBC Research & Consulting,  
2015.

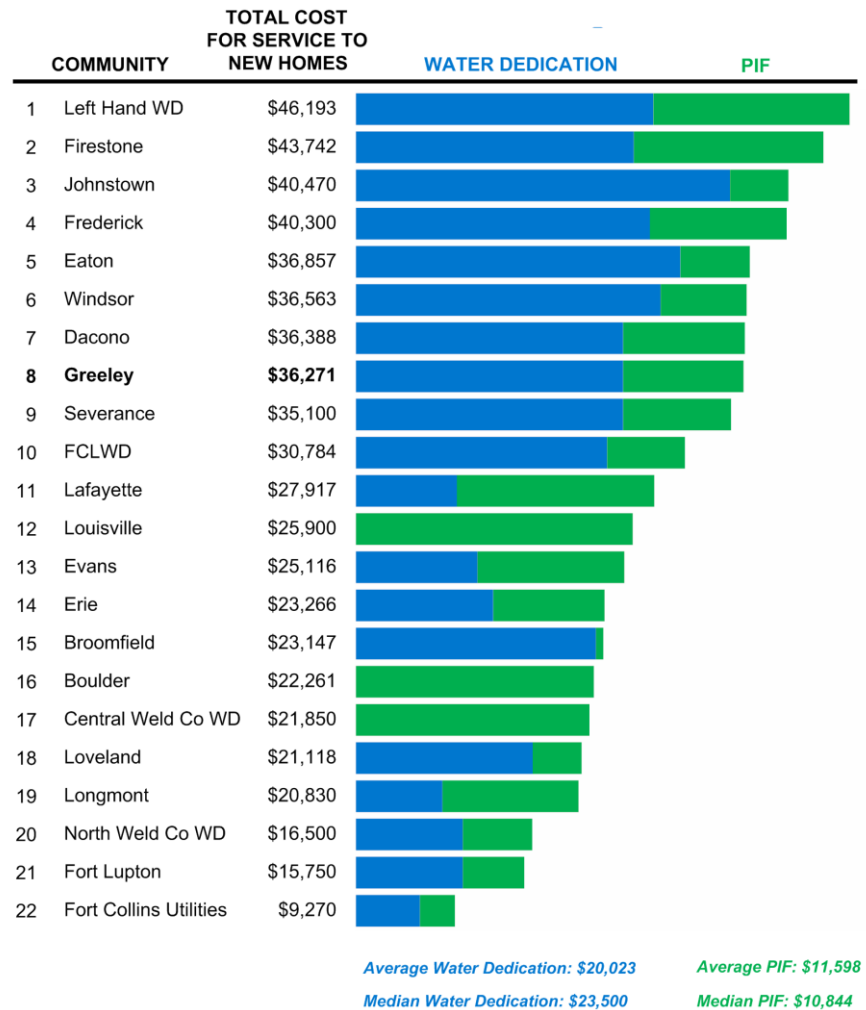


Figure II-6 summarizes the combined, cash equivalent costs per new home for water dedication/cash-in-lieu requirements, and tap and plant investment fees. Summed together, the total cost of obtaining water service for a new home in Greeley is currently \$36,271. This figure is about 26 percent higher than the average across the 22 communities (\$28,891) and about 35 percent higher than the median (\$26,909). Seven of the 21 other North Front Range communities (Dacono, Eaton, Firestone, Frederick, Johnstown, Left Hand Water District and Windsor) impose higher total costs per new home than Greeley, while the other 14 communities impose lower costs. If the slower growing communities served by Fort Collins Utilities, Longmont and Lafayette were excluded from the analysis, the average combined water dedication/tap and PIF fees among the remaining 19 communities would be \$30,784, or about five percent greater than the average including all communities.

**Figure II-6.  
Combined Cost of Water Service for New Homes in 22 Northern Front Range Communities (Includes Water Dedication/Cash-in-Lieu Requirements, Plant Investment Fees and Tap Fees)**

Notes:

\*Based on hypothetical two acre development. Assumes 4 lots per acre, average lot size of 0.20 acres (8,000 square feet), 3/4" taps.

\*\* Dacono is based on 5/8" tap because that is the most common for residential development in the city.

Source:

BBC Research & Consulting, 2015.

Total Cost per New Single Family Home			
	Water Dedication	PIF	Total
Left Hand WD	\$27,825	\$18,368	\$46,193
Firestone	\$26,000	\$17,742	\$43,742
Johnstown	\$35,000	\$5,470	\$40,470
Frederick	\$27,500	\$12,800	\$40,300
Eaton	\$30,357	\$6,500	\$36,857
Windsor	\$28,500	\$8,063	\$36,563
Dacono**	\$25,000	\$11,388	\$36,388
<b>Greeley</b>	<b>\$25,000</b>	<b>\$11,271</b>	<b>\$36,271</b>
Severance	\$25,000	\$10,100	\$35,100
FCLWD	\$23,500	\$7,284	\$30,784
Lafayette	\$9,450	\$18,467	\$27,917
Louisville	N/A	\$25,900	\$25,900
Evans	\$11,375	\$13,741	\$25,116
Erie	\$12,850	\$10,416	\$23,266
Broomfield	\$22,450	\$697	\$23,147
Boulder	N/A	\$22,261	\$22,261
Central Weld County WD	N/A	\$21,850	\$21,850
Loveland	\$16,538	\$4,580	\$21,118
Longmont	\$8,100	\$12,730	\$20,830
N. Weld Co WD	\$10,000	\$6,500	\$16,500
Fort Lupton	\$10,000	\$5,750	\$15,750
Fort Collins Utilities	\$5,990	\$3,280	\$9,270
Descriptive Statistics	Water Dedication	PIF	Total
Average	\$20,023	\$11,598	\$28,891
Median	\$23,500	\$10,844	\$26,909

Beyond the comparisons across the Front Range communities, the other obvious conclusion from this analysis is that the overall cost of obtaining water service has become a significant factor in the cost of developing (or purchasing) new homes – both in Greeley and in most of the other communities in the Northern Front Range. A brief review of the reported sales of new homes in Greeley on the Zillow website indicates an average sale price for newly constructed homes of about \$285,000. Greeley’s combined costs of more than \$36,000 for water dedication (or cash-in-lieu), plant investment fees and tap fees would represent almost 13 percent of the cost of a new, \$285,000 home.



## **SECTION III.**

# **Additional Research**

Fundamentally, the purpose of this study is to help Greeley answer two basic questions:

- Should Greeley consider modifications to the amount of water it requires from residential developers?
- Should Greeley consider modifications to the cash-in-lieu amount it requires from residential developers that bring cash instead of actual water supplies for their development?

In addition to researching the water dedication and cash-in-lieu requirements of other, comparable water providers in the Northern Front Range (see Section II), BBC conducted further research to examine these questions.

### **Water Dedication Volume Requirement**

Greeley currently requires residential developers to provide three acre-feet of water to Greeley (or an equivalent value in cash, as discussed later) for each gross acre of residential development. This dedication requirement appears reasonably consistent with competing cities in the northern Front Range. BBC's review of the water dedication requirements for 22 Northern Front Range water providers, including Greeley, found that the average volume requirement for residential developments was 2.9 acre-feet per acre and the median was 3.0 acre-feet per acre.

BBC also evaluated the consistency of this requirement with actual residential water use in Greeley. The City established the three acre-feet per acre water dedication requirement in 1963. An evaluation of Greeley's water demands in 2007 provided data on the water use factors for different types of local land uses. The relevant data from that study were based on water use records from 1999-2001 (see Figure III-1).

**Figure III-1.  
Water Use Factors by Land Use Type**

Land Use	Number of Records Used (1999-2001)	Water Use (acre-feet/acre/year)
Commercial	767	1.94
Employment District	14	1.51
Industrial	171	0.81
Moderate Density Residential	1,759	2.53
Low Density Residential	908	2.24
Large Lot Residential	98	1.64
Park / Cemetery	*Value provided by City of Greeley	2.80

Source: Greeley's 2007 Demand Evaluation, Table 2.2.

While the water use factors for the three residential categories in the preceding table are all below three acre-feet per acre, these factors do not provide a complete picture of Greeley's potential water requirements to serve its customers. The water use factors shown in Figure III-1 reflect water use at the tap, not total water requirements to serve the customer. For water resource planning purposes, Greeley typically assumes 7 percent system losses (or unaccounted for water) and a 7 percent safety factor. When these additional water requirements are included, the total water requirements for Greeley residential land uses range from 2.88 acre-feet per acre for moderate density residential to 1.87 acre-feet per acre for large lot residential. Low density residential falls in the middle at 2.55 acre-feet per acre.

Historically, one of Greeley Water's priorities has been to develop adequate supplies to meet customers' needs during drought periods and minimize shortages and water use restrictions. Prior analysis of Greeley water demands conducted by BBC in 2014 indicates that the three years of data used to develop the water use factors described above (1999-2001), in combination, experienced relatively average weather conditions. Across the three years, net evapotranspiration requirements averaged 98% of the average from 1998-2013, though 1999 was a notably wet year and 2000 was a notably dry year.

During the 1999-2001 timeframe, annual water use by single family residential accounts averaged 82,000 gallons for indoor use and 105,000 gallons for outdoor use. In other words, outdoor use accounted for 56 percent of single family water use. Under the driest of conditions – as experienced in 2002 – net evapotranspiration requirements in Greeley can be about 25 percent greater than average. Consequently, under the driest of conditions, single family residential water use during the 1999-2001 period would likely have averaged about 213,000 gallons per account, rather than the 187,000 gallons actually experienced over those three years. Applying this additional demand under very dry conditions to the water use factors described earlier indicates that, under such conditions, water use per acre during the 1999-2001 timeframe would have averaged about 3.32 acre-feet per acre for moderate density residential properties, about 2.94 acre-feet per acre for low density residential properties and about 2.15 acre-feet per acre for large lot residential properties. These dry year water use factors, shown in

Figure III-2, include system losses and Greeley’s safety factor, and are generally consistent with the historic three acre-feet per acre water dedication requirement.

**Figure III-2.  
Calculations of 1999-2001 Water Requirements for Residential Land Uses Including Losses, Safety Factor and Dry Year Irrigation Demands**

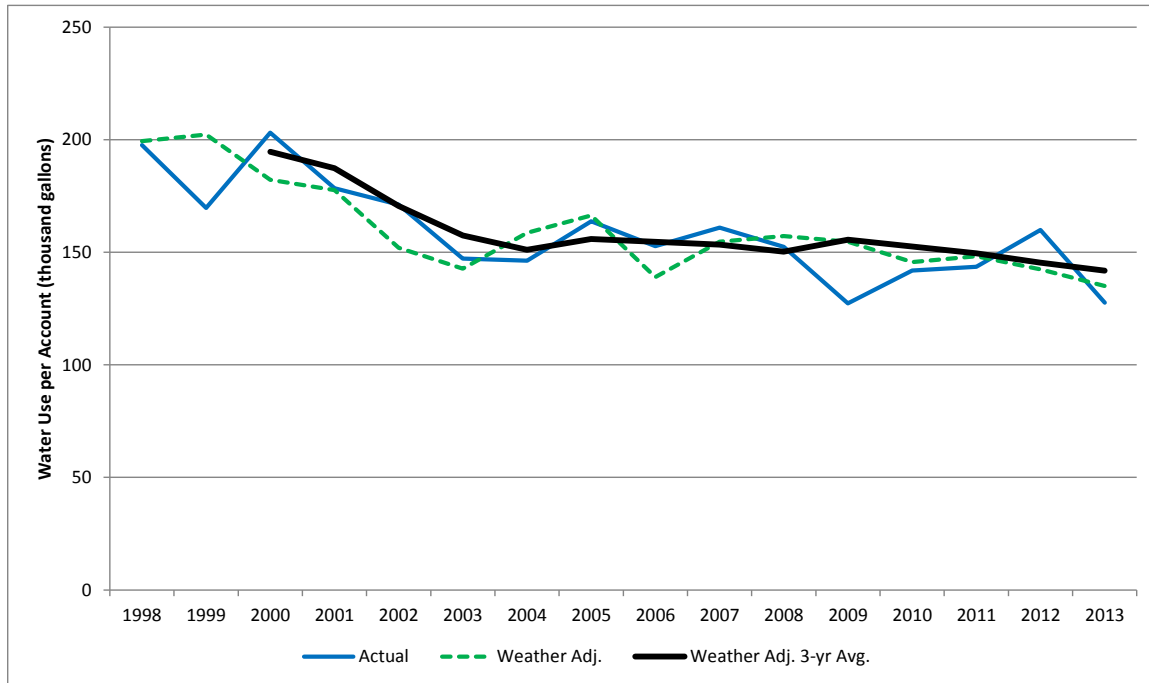
Historical Use/Acre	Moderate Density	Low Density	Large Lot
1999-2001 data used in 2007 Demand Study	2.53	2.24	1.64
7% system loss	0.18	0.16	0.11
7% safety factor	0.18	0.16	0.11
Total use	<u>2.88</u>	<u>2.55</u>	<u>1.87</u>
Potential use in driest years (2002 conditions)	3.32	2.94	2.15

Note: 2002 was the driest year in the 1998-2013 period analyzed by BBC in 2014. Net ET was 125% of average for the period. When applied to the 56% of single family water use for outdoor purposes at that time, this level of increased net ET corresponds to about a 15 percent increase in overall water demand.

Source: BBC Research & Consulting

If the three acre-foot per acre water dedication requirement was approximately the correct volume for residential water dedication as of 1999-2001, is it still the correct volume today? During BBC’s demand-related research under a separate contract for Greeley Water in 2014, we found that between the three year period of 1999-2001 and the three year period of 2011-2013 average water use by single family residential customers in Greeley declined by about 24 percent – as shown in Figure III-3. The more recent period included a mix of relatively wet (2011 and 2013) and very dry conditions (2012), but the overall average net ET across these three years was quite close to the longer term average (as it was for the 1999-2001 period).

**Figure III-3.**  
**Average Annual Single Family Water Use per Account, 1998-2013**



Source: Billing records from Greeley Water, 2014.

While single family residential water use has declined substantially over the past 15 years in terms of water use per household, Greeley’s water dedication requirements are based on the acreage of the land to be developed into single family residential homes, not the number of homes that will be developed. As part of our review, BBC also examined trends in the average lot size among new homes built in Greeley. Based on the Weld County Assessor’s data for the 2,998 homes built in Greeley from 2003 to the present, the average lot size for recently built single family residential homes is 0.19 acres (about 8,300 square feet). Assessor’s data for the 6,790 homes built in Greeley between 1980 and 2002 indicates the average lot size during the earlier period was 0.26 acres (or about 11,100 square feet). This comparison indicates the average lot size of newer homes in Greeley is about 25 percent smaller than the average lot size of the homes that were being built prior to 2003.

Based on this information, BBC concludes that the volume of water required to be dedicated for new single family development in Greeley remains consistent with the water those developments require. Although usage per individual home has declined by about 24 percent over the past 15 years, this reduction in average household use has been offset by a comparable reduction in lot sizes (and corresponding increase in development density). In other words, though newer homes require less water than they did fifteen or twenty years ago, there are more of them per acre of new development.

## Cash-in-Lieu Equivalent

Typically, Greeley requires developers to bring the water supplies to the City that their development will require, based on the water dedication requirements discussed previously. Acceptable sources for new development include the historic water supply used to irrigate the land, shares in Greeley-Loveland Irrigation Company (GLIC) or Greeley Irrigation Company No. 3 (GIC), or Colorado-Big Thompson (C-BT) units. GIC shares can only be used for 2/3 of the water dedication requirements of a new development because Greeley cannot get this water source to its treatment plants. In those cases, the developer typically meets the other 1/3 of their dedication requirement with C-BT .

Small residential developments requiring less than 8 acre-feet of water can choose to provide the City with an equivalent value in cash rather than water supplies. It is theoretically possible for larger developments to also bring cash to Greeley, rather than water supplies, upon approval by the Greeley Water and Sewer Board. In practice, the Board has not been asked to consider larger cash-in-lieu transactions up to this point in time. It is expected, however, that Greeley will begin taking more cash-in-lieu of water supplies in the future, once existing lots that have been approved have been fully developed and as C-BT and other water supplies become increasingly scarce. Somewhere between 2020 and 2040 (depending on the rate of population growth and development in Greeley), cash-in-lieu is likely to become the primary mechanism by which developers offset the impact of their developments on Greeley's water supplies, and revenue from these future cash-in-lieu transactions will be an important aspect of Greeley Water's financial situation.

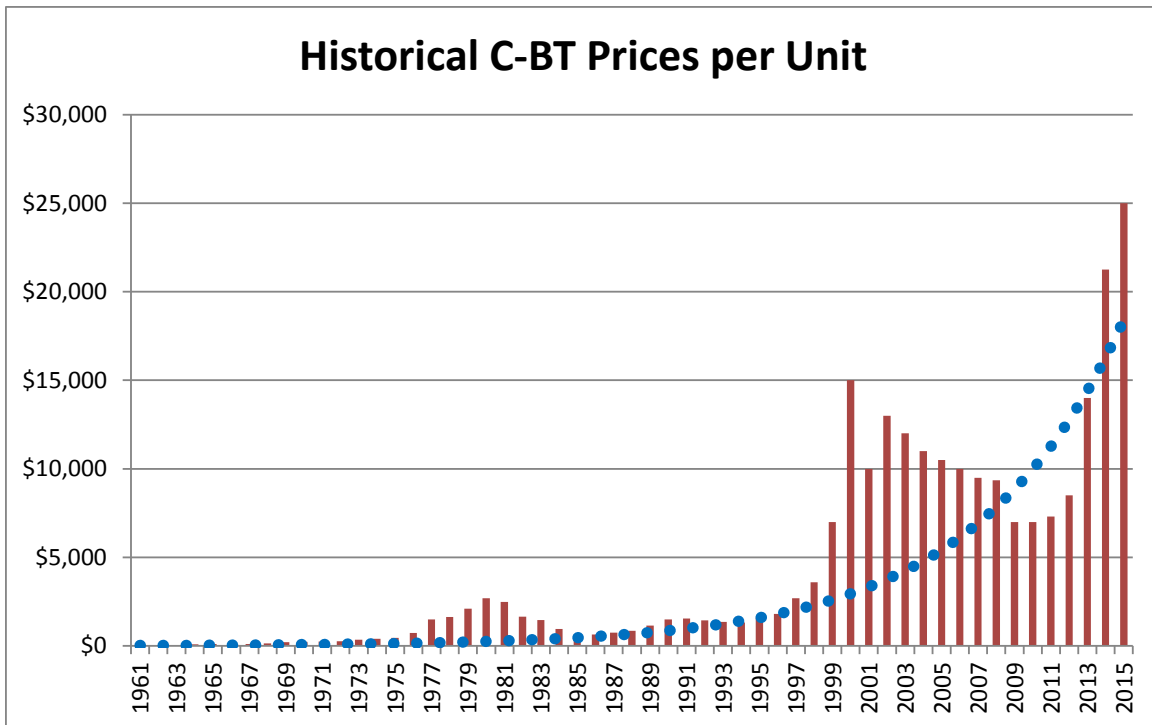
Greeley bases the cash-in-lieu value on the current price of C-BT units. This is the same approach used by the majority of the other communities in the northern Front Range that are experiencing substantial growth (among the communities that accept cash for at least some portion of the water requirements for new developments). The actual cash-in-lieu price differs among these communities due to several factors, including:

- The amount of water assumed to be needed for new developments (see previous discussion of volume requirements);
- Each community's interpretation of the yield of C-BT units; and
- How recently each community has updated its values to reflect changes in the market for C-BT units.

When northern Colorado communities last updated their cash-in-lieu values is important because C-BT prices have recently been escalating rapidly and have historically been quite volatile. Following a peak in year 2000, C-BT values fell during the early 2000s and bottomed during the "Great Recession" at about \$7,000 per unit in 2009-2010. As the northern Colorado economy and housing markets have recovered over that past five years, C-BT prices have more than tripled to approximately \$25,000 per unit. Most of this increase has occurred during the past three years.

Figure III-5 provides a longer term history of the prices for C-BT units, based on data from the Northern Colorado Water Conservancy District (Northern District). From the initial sales of C-BT units in 1961 for \$25 per unit, the price of C-BT has increased at an average rate of about 13 percent per year over the past 54 years. As the figure demonstrates, at times C-BT prices have risen at much faster rates, while at other times prices have substantially declined. Compared to a simple curve depicting an average appreciation rate of 13 percent per year from the original 1961 value (shown in dashed blue in Figure III-5), C-BT may be overvalued at present, and was likely undervalued between 2009 and 2012.

**Figure III-5. Historical C-BT Prices and Smoothed Value based on 13 Percent Annual Appreciation**



Source: Data through 2011 from NCWCD, data from 2012 through 2015 from City of Greeley.

**Benefits of basing the cash-in-lieu value on C-BT prices.** As shown in the comparables analysis, most northern Colorado communities experiencing substantial growth (that allow for cash-in-lieu of water dedication) also base their cash-in-lieu value on the price of C-BT. There are several good arguments for taking this approach:

- C-BT is traditionally the “gold standard” among water supplies in Northern Colorado for several reasons. Unlike most other supplies, C-BT is readily transferable (within the boundaries of the Northern District) and can shift between different types of uses without requiring legal action in water court. C-BT is also, of course, backed by the Bureau of Reclamation’s storage facilities that comprise the C-BT Project, and its yield characteristics are well established.

- C-BT is also unique in having a long-established and transparent water market. As shown in the earlier figure, C-BT prices have been tracked for more than 50 years and are readily available, unlike other water rights transactions.
- An argument can be made that the response of the C-BT market to local economic and development conditions, where C-BT prices tend to fall when housing markets are weakest, can be beneficial to developers and cities by encouraging development investment during economic downturns.
- The fact that Greeley and other communities in the Northern Front Range prefer C-BT supplies for water dedication also supports linking the cash-in-lieu value to C-BT prices. If Greeley set its cash-in-lieu value in a different fashion (and it resulted in a lower cash value), it would discourage developers from bringing C-BT units to the City. Given the finite supply of remaining C-BT units (discussed below), and the fact that Greeley cannot acquire more C-BT itself due to the “municipal cap,” the water dedication/cash-in-lieu policy is the primary means for the city to acquire C-BT units to serve future demands in Greeley.

**Disadvantages of basing cash-in-lieu value on C-BT prices.** There are some drawbacks to basing the cash-in-lieu value on C-BT prices, however.

- As demonstrated by the historical C-BT price data shown in Figure III-5, C-BT prices are highly variable and difficult to predict. This clearly can pose challenges for developers in evaluating the financial feasibility of their projects, and may also pose challenges for Greeley’s financial planning and forecasting
- The supply of C-BT units available for transfer is diminishing fairly rapidly. About 70,000 units were transferred from agricultural to municipal use between 1990 and 2010. Many of the remaining units identified as being owned by agriculture are actually controlled by entities such as the North Poudre Irrigation Company and are unlikely to be available for future transfers to municipal users. As of early 2012, the Northern District estimated there were about 40,000 truly transferrable units remaining.
- The diminishing supply of C-BT units is problematic in at least two ways. First, given the advantages of transferring C-BT to municipal use (relative to other northern Colorado water supplies), it is possible that the price differential between C-BT and other supplies will become even greater as the remaining supply of C-BT dwindles. Secondly, there is a real risk that the C-BT market will be essentially defunct by the time that Greeley converts from primarily receiving water from developers to primarily receiving cash-in-lieu payments.
- At the current market price of about \$25,000 per unit, it is likely that the cost of C-BT presently exceeds Greeley’s costs of developing new water supplies under its Future Water Account program. Greeley currently estimates that the combined costs of purchasing native flow water supplies (such as WSSC and Larimer Weld), changing the use of those supplies in water court, adding infrastructure necessary to use the supplies, and firming those supplies through additional storage is likely to be between \$16,000 and \$20,000 per acre-foot in today’s dollars. However, there are numerous uncertainties in this cost estimate, including the future yield of water supplies that have not yet been converted from agricultural to

municipal use, the transaction costs involved in the water court process and the ultimate success (and cost) of Greeley's plans to firm supplies through expansion of Milton Seaman Reservoir or a similar project. It is also important to recognize that the costs of purchasing non-C-BT supplies are also increasing over time. Share prices for WSSC and Larimer Weld water have increased at an average rate of at least 9 percent per year over the past decade.

The final section of this report provides BBC's recommendations regarding possible modifications to Greeley's water dedication and cash-in-lieu requirements.



## SECTION IV.

# Key Findings and Recommendations

The final section of this report summarizes BBC's key findings from our review of Greeley's water dedication and cash-in-lieu requirements and provides recommendations for consideration by the City of Greeley and the Greeley Water & Sewer Board.

### Key Findings

1. The basic elements of Greeley's water dedication and cash-in-lieu (CIL) policies are consistent with the policies in place among the other fast growing communities in Northern Colorado.
2. The actual costs that these policies place on new development (and ultimately new home owners) varies among northern Colorado communities due to differences in volume requirements and differences in the computation of corresponding cash equivalencies.
3. The volume of water that Greeley requires for residential developments is average among the 22 Northern Colorado water providers analyzed by BBC. Though Greeley has not updated the water volumes it requires from new development for more than 40 years, the volume requirements remain consistent with actual water demands by residential users. Reductions in water usage per household in recent decades have been offset by increases in housing density.
4. When water dedication/CIL requirements are converted into purely financial terms (e.g. cash equivalent values), the costs under Greeley's policies are higher than average among the 22 fastest growing areas in Northern Colorado. Greeley's policies currently correspond to a cash equivalent cost of \$25,000 per new home, compared to a median cost among the 22 Northern Colorado water providers of \$23,500 and an average cost of \$20,023. Most of the lowest cost water providers (such as Fort Collins Utilities, Longmont and Lafayette), have less growth potential than Greeley and less need to acquire new water supplies in increasingly competitive markets. Excluding the three providers just identified, the regional average cost per home is \$23,300.
5. Greeley bases its required cash payment on the volume of water required for the new development and the current price for Colorado-Big Thompson units (C-BT). This is the most common approach among the 22 Northern Colorado water providers in our study. The actual cost equivalency varies among the providers, depending on their volume requirements (discussed previously), their assumptions regarding the yield of C-BT, and how recently they have updated their C-BT price assumptions.

6. While the costs imposed by Greeley’s water dedication/cash-in-lieu policies are similar to those in other North Front Range growth areas, they do represent a significant cost for developers (and ultimately new home buyers). When combined with tap and plant investment fees of about \$11,300 per new home, the total cost of water service for a new home is now over \$36,000. This would represent about 13 percent of the total cost of a new, \$285,000 home in Greeley. These types of fees place a larger burden (in percentage terms) on lower cost homes and a smaller burden on more expensive homes.
7. The scale of this cost burden on new development is primarily due to the extraordinary increase in the price of C-BT units over the past three years. In 2012, when the price of C-BT was \$8,500 per unit (compared to \$25,000 per unit now), the combined cost of water dedication/CIL, tap fees and PIFs per new home was about \$20,000 per home – 44 percent less than the current cost.
8. The supply of C-BT units available for transfer to municipal use is finite and dwindling. While C-BT prices have historically been volatile (and can go down as well as up), the shrinking supply of transferrable units combined with their ease of use for municipal supply appears likely to continue to support high prices in the future.
9. Because Greeley’s CIL requirement is consistent with the current cost of adding new supplies via acquisition of C-BT units, the policy provides a neutral signal to developers who have the option of either purchasing C-BT or paying the cash-in-lieu equivalent. Since Greeley’s policy and practice has historically been to restrict the cash-in-lieu option to small developments (requiring less than 8 acre-feet of water), the policy effectively expands Greeley’s water resource portfolio through dedication of additional C-BT units. Greeley itself cannot currently acquire more C-BT due to the municipal cap imposed by the Northern Colorado Water Conservancy District.
10. Greeley’s intention has been to convert from primarily seeking water dedication to primarily accepting cash-in-lieu once it was able to acquire a sufficient bank of water supplies for future growth. By policy, “Cash-in-Lieu shall be priced at the full, actual cost of developing new water at a 50-year drought yield basis so as to completely replenish the water used from the Future Water Account.”<sup>1</sup>

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<sup>1</sup> 2014 Greeley Water Master Plan Annual Review. Key Policies, 1b.

11. While Greeley's CIL requirement is consistent with the cost of purchasing C-BT to serve new development, it is likely higher (at present) than the costs of adding to Greeley's supply through the purchase of other water supplies. Greeley estimates the current replacement costs for its non-CBT supplies at approximately \$16,000 per firm yield acre-foot, including the value of the water rights themselves (\$9,200 per acre-foot), legal and infrastructure costs (\$1,150 per acre-foot) and firming costs (\$5,650 per acre-foot). Greeley hopes to eventually be able to directly purchase C-BT again, when its municipal cap is increased in response to new growth.
12. The cost estimates for adding and firming non-CBT supplies are subject to much more uncertainty than the price of C-BT units. These cost estimates also do not include the financing costs for Greeley's water acquisition program, or financing costs for its future firming project. These costs are (and will be) financed with municipal bonds and are currently being primarily paid for by Greeley's ratepayers.

## Recommendations

In a policy evaluation such as this one, the first question a consultant needs to address is whether there is anything fundamentally wrong with the existing policy. In this case, the answer to that question is no. Greeley's current policy is internally consistent with the water demands posed by new residential developments, and with the current price of purchasing C-BT units in the market. The policy is also externally consistent with the policies imposed by other fast growing communities in northern Colorado.

The second question for this type of policy evaluation is whether or not there is a compelling reason to change the existing policy. Here, the evidence is more mixed. While BBC does not believe that the cost of water dedication or cash-in-lieu payments in Greeley necessarily need to be reduced because they are currently somewhat higher than average across the region, we do believe that the combined cost of water dedication, plant investment fees and tap fees is significantly affecting the cost of developing (and purchasing) new homes in Greeley. (This is also the case in many of the other fast growing communities in northern Colorado).

The primary culprit in the current high cost for water dedication (or cash-in-lieu) is the volatile and rapidly escalating price for C-BT units. While C-BT prices can go down as well as up, given the increasing scarcity of transferrable C-BT units, we anticipate this problem is more likely to worsen in the future than to improve. Eventually, we believe Greeley (and other northern Colorado municipalities) will need to decouple their water dedication and cash-in-lieu policies from the C-BT market. This decoupling will be compelled by either the "dry-up" of the C-BT market itself as the remaining units available for transfer become very scarce or by the price of C-BT reaching levels that are even more difficult for new development to support (or by a combination of both factors).

Greeley ultimately plans to transition from a policy that primarily relies on raw water dedication to one that primarily relies on cash-in-lieu payments. While BBC believes that policy change will be beneficial in a number of respects, the City is not ready to make this transition for at least three reasons:

- Although Greeley’s Future Water Account programs have succeeded in obtaining a substantial amount of water rights, Greeley is still not finished in its efforts to fill its future water “bank.” The supplies it has acquired to date will not be sufficient to meet the City’s long-term needs if it converts to a primarily cash-based system at this time.
- The costs of providing water to Greeley’s customers from this “bank” on a firm yield basis are still subject to considerable uncertainty. Risks in this area stem from both uncertainty regarding the yield of some of the agricultural water rights that Greeley has acquired (prior to completing change cases in water court) and uncertainty regarding the details, cost and permitting of the future storage “bucket” that will firm these supplies.
- Greeley still needs the additional GLIC shares and C-BT units that the City is acquiring through its water dedication policy to meet its long-term demand projections. As noted earlier, at this point in time the only way that Greeley can receive a share of the remaining transferrable C-BT units is through purchase and dedication by developers.

The third question in this type of policy evaluation is whether there are modifications that could improve the existing policy. Based on the considerations described in this section, as well as other input from stakeholders and others during our review process, BBC believes there are several potential modifications worthy of consideration. The recommendations are identified below, followed by an assessment of the advantages and disadvantages of implementing the recommendations.

**Recommendation 1.** Switch from using the current C-BT price to the average of C-BT prices over the latest three years to establish the water dedication and cash-in-lieu requirements. C-BT prices are highly volatile and have escalated rapidly over the past three years. Moving to the use of the three year average would both reduce the year-to-year volatility in the cost of development and provide at least temporary relief from the current, high level of C-BT prices. This change would also bring the cash-in-lieu requirement somewhat closer to Greeley’s costs of developing supplies from other sources.

Annual C-BT prices over the past three years (2013-2015) have averaged \$14,000; \$21,500 and \$25,000 per unit (respectively). The three year average would currently be \$20,083.

If this change were implemented now, it would reduce the cost of cash-in-lieu in Greeley to \$20,083 per home which is approximately the average (and below the median) among the 22 communities examined in Section II of this report. It would also reduce the total cost of obtaining water service for a new home in Greeley (including plant investment fees and tap fees) from over \$36,000 to about \$31,300. This combined cost aligns more closely with the \$28,900 combined cost average for obtaining single family water service among the comparable communities.

**Recommendation 2.** Accept shares in the North Poudre Irrigation Company (NPIC) for water dedication requirements, with a similar volume adjustment for the value of the embedded C-BT units. Although the cost of these shares is likely comparable to purchasing C-BT (since NPIC retains one C-BT unit to compensate the organization for system losses when the shares are transferred), these shares may at times be more readily available to developers than C-BT units. Greeley may wish to consider other, native water supplies on a case by case basis, but BBC

cannot recommend a blanket policy of accepting shares from other irrigation companies due to uncertainties regarding their yields after conversion to municipal use and other system-specific factors. We also believe it is important that Greeley's water dedication requirements do not inadvertently promote further competition for Greeley as it seeks to fill its water bank through its Future Water Account program.

**Recommendation 3.** Encourage developers to participate in a pilot program to encourage low water use development. Greeley is interested in the types of programs that have been instituted in other communities in which low water use developments can reduce their water dedication requirements through contractually specified maximum usage amounts per home. To institute this type of program, Greeley would need to determine the appropriate level of penalty surcharges that would be levied if homes exceed the contracted maximum usage.

**Recommendation 4.** Clarify that the The water dedication volume requirement should be applied to the gross developable area, not the gross platted area. If the development includes lands dedicated to open space or other purposes that will not be irrigated, those land areas should not be included in the calculation of the water dedication requirement.

**Recommendation 5.** Evaluate water dedication requirements for non-residential uses. By design, this study focused only on residential development. Greeley's water dedication requirements for other types of land uses, including multifamily residential and commercial developments, should also be evaluated. This is particularly important given the changes which are occurring towards higher density multifamily development, and ongoing changes in the types of commercial activity that may occur in Greeley.

**Recommendation 6.** Anticipate that Greeley will need to convert to a primarily cash-in-lieu system in the future. As stated several times in this report, BBC believes the supply of transferrable C-BT units is diminishing and that procurement of C-BT by developers will become increasingly difficult in the future. However, we also believe that future conversions of Greeley's agricultural water rights and ongoing progress in its efforts to permit its firming project will further clarify the firm yield cost of its non-C-BT supplies. When Greeley converts to a primarily cash-based system, it should also be possible to accept the cash-in-lieu payment at the time that taps are issued, which would ease the upfront financing burden on residential developers. Cash-in-lieu payments at the time of tap issuance are not unusual among systems that rely on a cash, rather than water dedication-based system, though this approach could increase Greeley's administrative burden and the cost of administrating its water dedication policies.

Like most potential changes to existing policies, there are advantages and disadvantages associated with the recommendations just described. Figure IV-1, on the following page, summarizes the advantages and disadvantages of each recommendation (and subcomponents of the recommendations, where applicable).

**Figure IV-1  
Advantages and Disadvantages of Study Recommendations**

Recommendation/component	Advantages	Disadvantages
<b>1 Switch to 3 Year Average C-BT Price</b>	<p>Brings CIL price closer to Greeley's average cost of developing new supplies</p> <p>Brings cost of CIL (and CIL + PIF + Tap Fees) closer to regional averages</p> <p>Enhanced stability and predictability for CIL price</p>	<p>Price would currently be less than Greeley would have to pay if it could buy C-BT</p> <p>If C-BT prices fall, 3 year average price could exceed current prices and create backlash</p> <p>Would increase amount of water Greeley has to acquire through its market acquisition program to compensate</p>
<b>2 Accept NPIC shares for water dedication</b>	<p>Provides another source of water that developers can obtain/dedicate to Greeley</p> <p>Yield and convertability of embedded C-BT units are not an issue with this water source</p>	<p>Potential liability to Greeley if/when NPIC needs to levy special assessment for Halligan Dam repairs or other issues</p>
<b>3 Pilot program for low water use development</b>	<p>Potential to reduce future water needs for Greeley and cost of water dedication/CIL for developers/homeowners</p> <p>There are precedents for these types of agreements in a number of other cities</p>	<p>Potential complexity in establishing program</p> <p>Risk that homeowners fail to follow covenants/requirements</p> <p>Administrative effort and cost</p>
<b>4 Clarify application of water dedication requirement</b>	<p>Administrative clarification</p>	<p>None</p>
<b>5 Evaluate water dedication requirements for non-residential uses</b>	<p>Non-residential development and water use have changed over the past few decades</p> <p>Potential improvement in accuracy and equity from review/revision based on recent usage information</p>	<p>Time, effort and expense for study</p>
<b>6 Anticipate shift to primarily CIL system in future</b>	<p>Help prepare for future when Greeley will have to rely on cash rather than water within next 10 to 20 years</p>	<p>None -- already being considered</p>
Accept cash-in-lieu payment when taps are issued (when the system is primarily CIL-based)	<p>Will reduce financing burden for developers</p> <p>Common practice with CIL-based systems</p>	<p>Shifts burden to builders</p> <p>May be perceived risk to Greeley, but limited because no tap provided without payment</p>

# **APPENDIX A.**

## **Details from Research with Comparable Communities**

See attached table

**Water Dedication (Cash-in-Lieu) Requirements: Small Residential Developments in Northern Colorado\***

Notes	Volume				Price				Date			
	Hypothetical Volume Required	Volume per acre required	Formula	Acceptable Sources	Yield Assumption	Cash?	Limitations	Hypothetical Cash Option		\$/ acre foot	Formula	
<b>Greeley</b>		<b>6.0 af</b>	<b>3</b>	<b>3 af/gross acre</b>	<b>CBT, historic water used on land to irrigate, Greeley Irrigation Co. (#3)</b>	<b>0.75 af/unit</b>	<b>Yes</b>	<b>Up to 8 AF total w/o Board Approval</b>	<b>\$200,000</b>	<b>\$33,333</b>	<b>\$25,000 per unit. 0.75 AF/unit</b>	
Boulder	Built out			NA			No			NA		
Broomfield	Water License-- Cash Only	4.0 af	2	.5 af per Tap Equivalent (163,000 gal)			Yes		\$179,600	\$44,900	\$22,450 per TE	Mar-15
Central Weld County WD	No policy. Too hard to find water. If you have CBT to transfer, the value is deducted from tap fees. Value based on last CBT price						No			NA		Mar-15
Dacono**	CWCWD treats and delivers water to master meters located at various points surrounding city limits.	8.0 af	4	5/8" tap: 1 unit CBT 3/4": 2 units CBT	100% C-BT	1 af/unit	No		\$200,000	\$25,000	Market price	Feb-15
Eaton		6.8 af	3.4	Per Dwelling Unit: .85 af CBT or .22 shares N. Poudre (If dual system: .4 af CBT or .1 N. Poudre)		.7 af/unit	No		\$242,857	\$35,714	Market price	Mar-15
Erie	Not based on CBT. Went out and bought CBT in the past, so based on price of the bond service	4.0 af	2	.5 af per dwelling unit			100%		\$102,800	\$25,700	\$12,850 per .5 af	Mar-15
Evans		3.6 af	1.82	.65 units CBT per unit	CBT, native considered	.7 af/unit	Yes		\$91,000	\$25,000	Current market price CBT	Apr-15
Fort Collins Utilities	Not tied to CBT	7.4 af	3.6864	1.92 x ((.18 x dwelling units)+(1.2x net acres))			Yes		\$47,923	\$6,500	\$6,500 per af	Jan-15
FCLWD	Cash only since 2003	8.0 af	4	Single Family: 1.0 af per unit	NA		Yes		\$188,000	\$23,500	\$23,500/af	Oct-14
Firestone	Must bring 75% water 25% cash	8.0 af	4	Lot size less than 10,000 sq ft: 1 share 10,000- 12,500 sqft: 1.25 share and so on up to 4.25 share	CBT	1 af per unit	Yes	7 or fewer units can either or. Larger developments must bring 75% water 25% cash, unless board approval otherwise	\$208,000	\$26,000	\$26,000/af (or unit) (110% CBT price) \$10,000 or 40% CBT price, whichever is higher per CBT unit	Jan-15
Fort Lupton		5.6 af	2.8	1 unit CBT per dwelling unit	CBT	.7 af/unit	Yes		\$80,000	\$14,286		Mar-15
Frederick		6.0 af	3	1.25 units of CBT for single family unit	CBT	.6 af/unit	Yes		\$220,000	\$36,667	\$27,500/1.25 units CBT (110% CBT Price)	Mar-15
Johnstown		5.6 af	2.8	1.4 unit CBT per unit	CBT or Consolidated Home Supply Ditch & Reservoir Company.	.5 af/unit	No		\$280,000	\$50,000	Market price	Mar-15
Lafayette		5.6 af	2.8	SF: .7 af	CBT	.7 af/unit	Yes		\$75,600	\$13,500	\$13,500/af	Jan-15
Left Hand WD	Large developments must bring water	8.4 af	4.2	Individual Residential 5/8=1 unit CBT 3/4 inch= 1.5 units 5/8 meters: Lots<7,000sf = .75 unit, 7,000-20,000 sf= 1.0 unit, Lots> 20,000sf=1.5 units	LHWD water can only be used within the service area.	.7 af/unit	Yes		\$222,600	\$26,500	\$26,500/af	Dec-15
Longmont	CIL is based on construction costs for new supply projects must include 1 af usable storage	6.0 af	3	3af/acre min (must transfer all or pay deficit)	CBT, native possibly considered	.76 af/unit	Yes		\$64,800	\$10,800	\$10,800/af	Dec-14
Louisville	Included in tap fee						No		\$0			Mar-15
Loveland	Minimum 50% must be CIL or CBT	5.0 af	2.52	(.23 units x # units) + (1.6 x lot acres) +(1.4 x lot area > 15,000sf) + (3.0 x greenbelt acres)	CBT, native possibly considered	1 af/unit	Yes		\$132,300	\$26,250	\$26,250/af (\$25,000 per unit + 5%admin fee)	Nov-14
N. Weld Co WD	Cash only	2.8 af	1.4	Lot size: greater than .33: 1 unit greater than .2, less than .33: .75 unit Less than .2 acres: .5 unit	NA	.7 af/unit	Yes		\$80,000	\$28,571	\$20,000 per CBT unit	Mar-15
Severance	Changes the price monthly	5.6 af	2.8	3/4": 1 af unit CBT	CBT	.7 af/unit	Yes		\$200,000	\$35,714	\$25,000/ CBT unit	Mar-15
Windsor	Must pay 50% CIL & 50% CBT. Some small can fully pay CIL.	6.0 af	3	SF: 3 af/gross acre MF: Case by case, usually: 0.5-0.75 af/unit	CBT	.7 af/unit	Yes	No limitations for single family. MF is case by case	\$228,000	\$38,000	\$38,000/af	Feb-15

\*Based on hypothetical two acre development. Assumes 4 lots per acre, average lot size of 0.20 acres (8,000 square feet), 3/4" taps.

\*\*Dacono is based on 5/8" tap because that is the most common for residential development in the city.



**WATER & SEWER BOARD AGENDA** AUGUST 19, 2015

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE \_\_\_\_\_

ITEM NUMBER: 11

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

**WATER & SEWER BOARD AGENDA** AUGUST 19, 2015

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           12

TITLE:                   SUCH OTHER BUSINESS THAT MAY BE  
                              BROUGHT BEFORE THE BOARD AND  
                              ADDED TO THIS AGENDA BY MOTION OF  
                              THE BOARD

RECOMMENDATION:      TO BE DETERMINED

ADDITIONAL INFORMATION: