

WATER & SEWER BOARD AGENDA

Wednesday, August 17, 2016
2:00 p.m.

DISTRICT 6
ADMINISTRATION BUILDING
1025 9th Avenue
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 _____ Mrs. Victoria Runkle
2. Approval of Minutes
3. Approval of and/or Additions to Agenda
4. Action: Approve First Amendment to MPIC Acquisition Contract
5. Report: Quarterly Water Court Update
6. Report: Water Budget Public Information Launch
7. Executive Session
8. Legal Report
9. Director's Report
10. 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 Shannon Metcalf at 970-350-9818.

City of Greeley
Water and Sewer Board
Minutes of July 20, 2016
Regular Board Meeting

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:02 p.m. on Wednesday, July 20, 2016.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Bob Ruyle, Fred Otis, Tony Miller, Joe Murphy, Manual Sisneros and Finance Director Victoria Runkle

Water and Sewer Department staff:

Water and Sewer Director Burt Knight, Deputy Director of Water Resources Eric Reckentine, Water Resources Operations Manager John Thornhill, Budget Analyst Erik Dial, Office Manager Rachel Borum, Administrative Specialist Shannon Metcalf, and Administrative Specialist Angel Salazar

Legal Counsel:

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

Other Guests: Community Development Director Brad Mueller and Planner III John Barnett

2. Approval of Minutes

Mr. Murphy moved and Mr. Otis seconded to approve the June 15, 2016, Water and Sewer Board meeting minutes as presented. The motion carried 7-0.

Burt Knight introduced Rachel Borum, Office Manager

3. Approval of and/or Additions to Agenda

There were no changes to the agenda.

4. Action: Approve Cash-in-Lieu

Mr. Reckentine stated that staff recommends that CIL be increased to \$32,000/acre foot.

A motion was made by Vice-Chairman Todd and seconded by Mr. Miller to approve cash-in-lieu at the rate of \$32,000.00 per acre foot. The motion carried 7-0.

5. Report: Water Supply Update

Mr. Thornhill gave an update on the water supply as part of the Drought Emergency Plan. Thru July 8th, cumulative precipitation in Greeley was 130% of the historic average. Although reservoir storage in the South Platte basin is lower than last year, storage in the basin has been above average for 32 months in a row now.

The High Mountain Reservoir system yielded over 6,300 acre-feet of supply with the majority of that being rented out to agriculture. The Greeley Loveland System yielded over 21,000 acre-feet through July 8th.

Through July 13th, staff rented approximately 15,500 acre-feet of water to agriculture. With forecasted temperatures expected to be above average and storage levels dropping, staff has ceased water rentals at this time. The Greeley System Storage Analysis table shows the April 2017 storage level will be approximately 23,700 acre-feet. This is after collateralizing 1,000 acre-feet due to potential Windy Gap spills in the Northern system. Projected storage remains above the 20,000 acre-feet target storage level; therefore the Adequate Water Year conditions declared in April 2016 still remain valid.

6. Action: Approve Acquisition of Danielson Farm and 3 Shares Water Supply and Storage

Mr. Reckentine explained that the Danielson property contains approximately 332.45± acres of land, located in Weld County Colorado and of three shares of the Water Supply & Storage Company. The total purchase price for the Property is \$3,925,000.00. If the Property's valuation is less than the Total Purchase Price, then the Buyer has the sole option and election to terminate this Agreement prior to the expiration of the Governmental Approval Period. If the Property's valuation is greater than the Total Purchase Price, Buyer agrees to increase the Purchase Price accordingly.

A motion was made by Chairman Todd, seconded by Mr. Sisneros, to authorize the Purchase and Sale Agreement and delegate authority to the Director of Water and Sewer, or his designee, to make minor amendments to the Purchase and Sale Agreement, including but not limited to, amendments to property descriptions and contract extensions and to close on the purchase. The motion carried 7-0.

Mayor Norton joined the meeting at 2:25 p.m.

7. Action: Approve Acquisition of Mountain and Plains Preferred Rights

Mr. Reckentine stated that these are 5 preferred contract rights originated by the Mountain and Plains Irrigation Company, which is now dissolved. North Weld Water District has agreed to divest these rights to Greeley. The total purchase price for the MPIC Preferred Rights is \$60,000.

A motion was made by Vice Chairman Todd, seconded by Mr. Miller to approve the acquisition of the 5 Mountain and Plains Preferred Rights. The motion carried 7-0.

8. Report: City Center Development

Mr. Knight stated that the City of Greeley is working to consolidate office locations into a single facility. He then presented the proposed City Center schematics of the building designs. This will be a 2 phase project and the Water and Sewer Department is now included in Phase 1 of construction. The completion date is expected to be mid-year of 2018. The construction will start in the beginning of 2017.

John Thornhill left the meeting at 2:51 p.m.

9. Report: 2016 Work Program Regional Utility Collaboration

Mr. Knight explained that Greeley currently provides water treatment not only for its residents but also for the residents in Evans, Windsor and Milliken. As the region continues to grow, collaboration in the area of water and sewer services will be important. This program includes the study of various collaborative water and sewer service delivery models for the future. The next step will be to meet with organizations that provide water service and discuss expansions or modifications; poll potential interest in cooperative plant expansion or modification work and system interconnects.

Erik Dial left at 3:27 p.m.

10. Executive Session:

At 3:28 p.m. Chairman Evans made a motion to move into executive session to address the following matters:

1. Purchase, acquisition, lease, transfer, or sale of property under C.R.S. §24-6-402(4)(a) and Greeley Municipal Code 2.04.020(1). 2
2. Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators, as authorized by C.R.S. §24-6-402(4)(e) and Greeley Municipal Code 2.04.020(5).

Chairman Evans identified the following topics for discussion:

1. Matters related to Windy Gap FIRMING Project.
2. Matter related to the United State Fish and Wildlife Service's Draft Recovery Plan for the Preble's Meadow Jumping Mouse.

Mr. Murphy seconded the motion. The motion carried 7-0.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Bob Ruyle, Fred Otis, Joe Murphy, Tony Miller, Manual Sisneros, Mayor Tom Norton, Director of Finance Victoria Runkle, Director of Water and Sewer Burt Knight, Deputy Director of Water Resources Eric Reckentine, Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Daniel Biwer, and Water and Sewer Board Counsel Jim Witwer

The executive session ended at 4:26 p.m. and the regular meeting resumed.

11. Action: Authorize Staff to Negotiate the Acquisition of Additional Windy Gap FIRMING Storage

A motion was made by Chairman Todd, seconded by Bob Ruyle that the Board authorize the Director of Water and Sewer, or his designee, to negotiate for the acquisition of additional storage allocation in the Windy Gap FIRMING Project up to the maximum amount available but not to exceed 4,000 acre feet.

12. Legal Report:

Mr. Witwer stated that staff and counsel recommend filing one statement of opposition this month.

Sorin Natural Resource Partners LLC /Denver-Julesburg Water Resource Partners LLC (16CW3075): Application for conditional appropriative right of exchange; exchange supplies include changed rights attributable to New Cache la Poudre Irrigation Company and Cache la Poudre Reservoir Company shares (Greeley participated as opposer in change case, No. 14CW3046), and claimed delivery/exchange reach overlaps with Greeley exchange reaches (Cache la Poudre and South Platte Rivers).

A motion was made by Vice Chairman Todd, seconded by Mr. Miller to authorize the filing of a statement of opposition in Case No. 16CW3075, 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 carried 7-0.

13. Director's Report:

- Western Water Symposium & Barbeque on Monday, July 25th at CSU. Mr. Knight noted that the deadline to RSVP is today, Wednesday, July 20th.
- **Water Board Tour, July 22nd – Tour Locations**
The tour includes recent construction work completed at the Water Pollution Control Facility, Poudre Ponds, the Boyd Water Treatment plant and the 5MG Storage Tank at Gold Hill.

There being no further business, Chairman Evans adjourned the meeting at 4:33 p.m.

Harold Evans, Chairman

Shannon Metcalf, Senior Administrative Assistant

WATER & SEWER BOARD AGENDA AUGUST 17, 2016

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 4

TITLE: ACTION: APPROVE FIRST AMENDMENT TO
MPIC ACQUISITION CONTRACT

RECOMMENDATION: APPROVE FIRST AMENDMENT TO MPIC
ACQUISITION CONTRACT

ADDITIONAL INFORMATION:

Last month, the Water and Sewer Board authorized the acquisition of five Mountain and Plains Irrigation Company preferred rights from North Weld County Water District. The title company named in the contract has determined that it will no longer handle water rights transactions of this nature. This amendment will allow Greeley to select a suitable replacement. There are no other changes to the contract.

FIRST AMENDMENT TO AGREEMENT
FOR PURCHASE AND SALE OF MPIC PREFERRED RIGHTS
(North Weld County Water District)

This FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF MPIC PREFERRED RIGHTS (“First Amendment”) is entered into by and between NORTH WELD COUNTY WATER DISTRICT, a Colorado quasi municipal corporation (“North Weld” or “Seller”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation (“Greeley” or “Buyer”).

RECITALS

WHEREAS, North Weld and Greeley entered into that certain Agreement for Purchase and Sale of MPIC Preferred Rights dated July 28, 2016 (“Purchase Agreement”); and

WHEREAS, Section 2(a) of the Purchase Agreement specified that Land Title Guarantee Company of Greeley (“Land Title Guarantee”) would hold the Earnest Money deposit and provide closing services for the Purchase Agreement transaction; and

WHEREAS, Land Title Guarantee has since informed Greeley that it will no longer provide services of this nature for transactions that involve water rights without associated land; and

WHEREAS, North Weld and Greeley desire to substitute a suitable title company to provide the necessary services more particularly described in the Purchase Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. AMENDMENT. Section 2(a) of the Purchase Agreement is hereby amended and shall read in its entirety as follows:

a. A portion of the Purchase Price to be considered earnest money shall be paid by Greeley prior to Closing (“Earnest Money”). The Earnest Money, in the amount of \$5,000.00, shall be due and payable to and held by a capable title company to be selected by Greeley (“Title Company”), in its trust account, five days after the First Amendment is approved and fully executed. The Earnest Money deposit shall be credited against the Purchase Price if the Closing occurs. The Earnest Money shall be refundable to Greeley at any time prior to the expiration of the Title Objection and Off-Record Matters Objection Deadlines, if Greeley is not satisfied with the condition of title, and shall be subject to return to Greeley upon termination of this Agreement by Greeley pursuant to Sections 5

and 13 below. Except as otherwise set forth in this paragraph, the Earnest Money shall be non-refundable to Greeley.

2. FULL FORCE AND EFFECT. Except as explicitly modified by this First Amendment, the Purchase Agreement executed by and between North Weld and Greeley on July 28, 2016 remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the dates set forth below.

SELLER

**NORTH WELD COUNTY WATER DISTRICT,
a Colorado quasi municipal corporation**

By: _____

Title: _____

Date: _____

BUYER

**CITY OF GREELEY, COLORADO,
a Municipal Corporation, acting by and
through its Water and Sewer Board**

By: _____
Board Chairman

By: _____
Mayor

APPROVED AS TO SUBSTANCE:

ATTEST:

By: _____
City Manager

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

AS TO AVAILABILITY OF FUNDS:

By: _____
City Attorney

By: _____
Director of Finance

WATER & SEWER BOARD AGENDA AUGUST 17, 2016

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 5

TITLE: REPORT: WATER COURT CASE &
 OPPOSITION

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

This item intends to update the Board on the current status of Greeley's water court cases including statements of opposition and cases where Greeley is the applicant or will soon be filing an application for change of water rights.



Water & Sewer Department

MEMORANDUM

TO: Greeley Water & Sewer Board
FROM: Jen Petrzelka, Water Resource Administrator II
DATE: August 17, 2016
RE: Water Court Cases Update, 2nd Quarter

This memorandum is a quarterly review of the Water and Sewer Department's water court activities during the 2nd quarter of 2016 (April, May, and June). The review includes an update on Greeley's current Water Court cases and a summary of the Water Resources Division's legal expenses.

STATEMENTS OF OPPOSITION

Since the last update in May, Greeley has stipulated to six cases and filed two statements of opposition, therefore the current number of pending Water Court cases where Greeley is an opposer is 21. This is a 22% decrease from the end of 2015 when Greeley was an opposer in 27 Water Court Cases.

Cases stipulated:

- 13CW3168 (LG Everist)
- 07CW331 (Ogilvy Augmentation Company)
- 14CW3160 (WR Investments)
- 14CW3144 (North Weld County Water District)
- 06CW40: (ECCV/Colorado Water Network, LLC)
- 14CW3130/14CW3131 (United/ACWWA exchange cases: Applicants requested dismissal of their application claiming they no longer need the water rights)

Cases entered:

- 16CW3035 (Pine Creek Pipeline due diligence)
- 16CW3059 (United Water)

GREELEY AS APPLICANT

A summary of Greeley's pending Water Court cases where Greeley is the applicant or seeking to be the applicant is as follows:

SERVING OUR COMMUNITY • IT'S A TRADITION

We promise to preserve and improve the quality of life for Greeley through timely, courteous and cost-effective service.

15CW3099 (application to make absolute, and for reasonable diligence, for 99CW234 conditional rights (Poudre Ponds))

Greeley filed its application for the 99CW234 (Poudre Ponds) conditional water right on August 31, 2015. Greeley is claiming 1300 acre-feet of absolute storage under its 1999 junior priority and a maximum absolute exchange rate of 10.34 cfs. We received minor decree comments from opposers and have made progress towards settlement, although no stipulations have been reached yet.

Statements of Opposition were filed by:

- Whitney Irrigation Company
- Ogilvy Irrigating and Land Company
- New Cache La Poudre Irrigating Company
- Greeley Irrigation Company
- Cache La Poudre Water Users Association

15CW3162 (Rockwell Reservoir)

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. 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.

In December 2015 Greeley filed its application seeking to make Milton Seaman Reservoir an alternate place of storage for the Rockwell Reservoir conditional storage right, as well as adding Milton Seaman Reservoir as an exchange-to point for certain associated rights of exchange.

Statements of Opposition were filed by:

- Water Supply and Storage Company
- Linda A. McMurry Trust and Murry R. McMurry Trust
- Lake Canal Reservoir Company
- City of Fort Collins
- CO Parks and Wildlife
- Cache La Poudre Water Users Association
- North Poudre Irrigation Company
- CO State Board of Land Commissioners
- City of Thornton
- Northern Colorado Water Conservancy District

Greeley amended the application to include the Fort Collins Pipeline diversion as an alternate point of diversion and exchange-to point for the Rockwell Reservoir water rights, which would allow Greeley to pump the Rockwell rights from the mainstem of the Poudre for storage in Milton Seaman Reservoir. The amended application has been published in the June Water Resume.

15CW3163 (GIC change case)

In December 2015 Greeley filed an application for the change of use for 77.8 of its Greeley Irrigation Company (GIC) shares. GIC owns 5/8ths of Greeley Canal No. 3 and its water rights (Greeley owns the other 3/8ths separate from its GIC share ownership). The application generally tracks Greeley's first GIC share change application (99CW232) and GIC change applications filed by others.

Statements of Opposition were filed by:

- East Cherry Creek Valley Water and Sanitation District
- Greeley Irrigation Company
- Martin Marietta Materials
- United Water and Sanitation District
- City of Thornton
- North Poudre Irrigation Company
- Ogilvy Irrigating and Land Company
- Cache La Poudre Water Users Association
- City of Fort Collins
- Central CO Water Conservancy District

We received comments from opposers and are working to resolve those issues.

16CW3047 (application to make absolute, and for reasonable diligence, for 99CW231 conditional rights)

In March 2016 Greeley filed its application for a finding of reasonable diligence on the rights decreed in Case No. 99CW231, which include conditional groundwater rights, a conditional surface water right, and conditional exchanges. Greeley is claiming a number of groundwater rights and exchanges absolute, as well as the North Ridge Enlargement surface water right.

Statements of Opposition were filed by:

- Greeley Irrigation Company
- Cache La Poudre Water Users Association

Leprino

Greeley has been working with Leprino Foods, Inc. ("Leprino") to prepare a water court application for quantification of reusable return flows and appropriative rights of substitution and exchange. Greeley has completed a preliminary engineering report and draft application, which will be sent to Leprino for its review and approval before filing.

Larimer & Weld Irrigation Company change case

Greeley now owns and will seek to change its shares under the Larimer and Weld system. Greeley has been cooperating with the various ditch companies to review their records in anticipation of a future change case. Additional review of records and data has occurred since the last Board update.

LEGAL & ENGINEERING EXPENSES:

The Water Resource Division's outside legal and engineering expenses for the 2nd quarter of 2016 totaled \$141,236. The total spent for the year to date is \$197,998 which is 72% of the total spent in 2015 of \$276,449.

2016 Water Resources Legal and Engineering Costs

1st quarter

Legal expenses	\$ 1,270
Engineering expenses	\$ 55,492
Total	\$ 56,762

2nd quarter

Legal expenses	\$ 27,669
Engineering expenses	\$113,567
Total	\$141,236

WATER & SEWER BOARD AGENDA AUGUST 17, 2016

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 6

TITLE: REPORT: WATER BUDGET PUBLIC
 INFORMATION LAUNCH

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

City of Greeley Water and Sewer Department staff has begun the marketing and public outreach for the Water Budget Program in advance of changing the single-family residential rate to a water budget rate structure in 2017. Staff will present to the Board on plans for the next three months as well as progress to-date.

WATER & SEWER BOARD AGENDA AUGUST 17, 2016

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 7

TITLE: EXECUTIVE SESSION

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA AUGUST 17, 2016

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 8

TITLE: LEGAL REPORT

POSSIBLE ACTION: STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA AUGUST 17, 2017

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 9

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts
- Temporary Suspension of the Joint Operations Plan

Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts

(Effective Date: Month, Day, 2016)

Historical Background

Since 1938 the Northern Colorado Water Conservancy District (Northern Water) has issued Allotment Contracts to provide for the beneficial use of water yielded from the Colorado-Big Thompson (C-BT) Project by water users located within Northern Water boundaries. Those beneficial uses include irrigation, domestic, municipal, and industrial uses. The Northern Water Board of Directors (Board) issues Allotment Contracts in accordance with Northern Water's defined rules, regulations, policies and procedures. C-BT Project water is intended to supplement an Allottee's existing non-C-BT Project water supply portfolio.

The finite water supply available to meet future water needs within Northern Water boundaries, when combined with the ever-increasing demands for water, requires that water users strive to accomplish the maximum beneficial use of all available water supplies in the region. These factors, coupled with the recognized ability to transfer C-BT Project water contribute to the functionality, utility, and value of C-BT Project water. As pressures on existing water supplies increase, various water users are entering into innovative water sharing agreements such as interruptible water supply contracts. These agreements, when entered into by an Allottee utilizing water yielded from a C-BT Project Allotment Contract, represent the subcontracting of beneficial use of the water yielded from that Allotment Contract.

Further complicating these transactions is Northern Water's requirement that the beneficial use of water yielded from the C-BT Project be accomplished in full compliance with the terms and conditions of the Allotment Contract, the Water Conservancy Act, the terms and conditions of the contractual documents between Northern Water and the United States Bureau of Reclamation that govern the operation and administration of the C-BT Project, and Northern Water's rules, regulations, policies, and procedures.

It has become apparent to Northern Water that there are instances when the beneficial use of C-BT Project Allotment Contracts may be subcontracted by the Allottee to one or more water users. As such, it is the responsibility of the Board to assure that these Subcontracts result in C-BT Project water being used in accordance with all controlling rules, regulations, policies, procedures, statutes, and contractual requirements while also meeting the responsibilities, and obligations of Northern Water. To assure compliance with statutes, the terms and conditions of the contractual documents associated with the C-BT Project, and the terms and conditions of the involved Allotment Contract(s), and to assure the Board is meeting its obligations and responsibilities, the Subcontracting of the beneficial use of C-BT Project water yielded from the Allotment Contract by an Allottee must be done only with the full knowledge and approval of the Board.

This Rule is promulgated to clearly state the Board's requirements associated with existing, currently proposed, and future Subcontracts for the beneficial use of C-BT Project water yielded from an Allotment Contract.

Rule

1.0 Rule Purpose

- 1.1 This Rule defines the requirements of Northern Water pertaining to the Subcontracting of the beneficial use of water yielded by a C-BT Project Allotment Contract by the Allotment Contract owner (referred to herein as the Allottee) to another water user (referred to herein as the Subcontractor).

2.0 Rule Definitions

- 2.1 Account Entity - An Account Entity may be comprised of a single C-BT Project water user, or multiple C-BT Project water users. In most instances, one or more Allotment Contracts have been certified for delivery through an Account Entity's respective quota account. An Account Entity may have multiple physical delivery points from the C-BT Project. For some agricultural Water Users, a "C-BT carrier" may be synonymous with an Account Entity having the same name.
- 2.2 Acre Foot Unit (AFU) - Unit of measurement used for the allocation of C-BT Project water to an Allottee in an Allotment Contract. An AFU receives 1/310,000th of the water annually declared to be available from the C-BT Project by the Board. Historically, an AFU annually yields 0.5 to 1.0 acre feet per AFU.
- 2.3 Allotment Contract - The contract between the Allottee and Northern Water that allocates C-BT Project water to the Allottee for a specified beneficial use. Allotment Contracts are issued on an AFU basis.
- 2.4 Allottee - An entity (person, corporation, company, or otherwise) that owns one or more Allotment Contracts for C-BT Project Water as issued by Northern Water. For purposes of this Rule, the Allottee is the entity subcontracting water to another water user (the Subcontractor).
- 2.5 Base Supply - Any permanent non-C-BT Project water supply held and/or controlled by a water user or an Allottee.
- 2.6 Board – Northern Colorado Water Conservancy District Board of Directors
- 2.7 C-BT - Colorado-Big Thompson
- 2.8 Forfeiture – As stated in 37-45-134 (c) C.R.S.

- 2.9 Irrigation – The application of water for beneficial use, without waste for the primary purpose of growing and producing crops to be harvested, or consumed by livestock, including pasture lands, and for uses incidental to the primary production of such crops.
- 2.10 Northern Water - Northern Colorado Water Conservancy District
- 2.11 Quota Water - The amount of C-BT Project water declared available each year by the Board from the yield of the C-BT Project to an Allottee through the determination of the annual quota. The declared quota represents the percentage of an acre-foot of C-BT Project water made available for each AFU owned by the Allottee.
- 2.12 Rule 11 Charge - The payment due to Northern Water resulting from some Seasonal Transfers in accordance with Northern Water Rule 11.
- 2.13 Seasonal Transfer - The transfer of Quota Water through Northern Water’s administrative process. This transfer may be done electronically through Northern Water’s accounting system Allottee interface or through the use of a CD-4 card.
- 2.14 Subcontract – For purposes of this Rule, any type of agreement (contract, lease, or otherwise) or concurrent agreements that transfer the beneficial use of an Allottee’s C-BT Project water to a Subcontractor for an aggregate time period of two years or longer. The Subsections to this Section provide additional definition concerning Subcontracts.
- 2.14.1 Bridge Supply Subcontract - This type of Subcontract provides the Subcontractor C-BT Project water for a predetermined and definite period of time. As an example, a Subcontractor might need the interim water supply in anticipation of a new water supply project becoming operational, as an emergency supply in response to failed infrastructure or water quality issues, or as a supply to meet a temporary demand.
- 2.14.2 Interruptible Supply Subcontract - This type of Subcontract provides the Subcontractor C-BT Project water under certain conditions for the duration of the Subcontract. As an example, an Interruptible Supply Subcontract may provide water to a municipal or industrial supplier during a drought period or during certain years following a drought. For the purposes of this Rule, an Interruptible Supply Subcontract is not to provide yield from the C-BT Project to the Subcontractor each and every year.
- 2.14.3 Other Subcontract - Any Subcontract that provides the Subcontractor C-BT Project water that is not either an Interruptible Supply or Bridge Supply Subcontract.

- 2.15 Subcontractor - An entity (person, corporation, company, partnership, limited liability company or other legally defined entity) that is Subcontracting for the beneficial use of C-BT Project water from an Allottee. The Subcontractor may or may not be an Allottee. However, a Subcontractor must have a defined beneficial use of C-BT Project water within the boundaries of Northern Water and comply with all applicable rules, regulations, guidelines, policies and procedures of Northern Water.
- 2.16 Tract - A unit of land identified by Northern Water in a Class D Allotment Contract.

3.0 Required Approval of Subcontracts

- 3.1 ~~All Subcontracts, as defined in Section 2.14, entered into after the effective date of this Rule are prohibited without the approval of the Board pursuant to this Rule. Subcontracting of the beneficial use of water yielded by an Allotment Contract for two years or longer after the effective date of this Rule is prohibited without the approval of the Board. Other Subcontracts such as Subcontracts representing internal trades of C-BT Project water for other water of similar value or arrangements where a water supplier provides treated water service in exchange for receiving C-BT Project water from an Allottee resulting in the beneficial use of C-BT Project water being primarily made by the Allottee will may be exempt from this Rule subsequent to if Northern Water mak~~ ing ~~such a determination after its review of the Subcontract.~~
- 3.2 Subcontracts that are in existence as of the effective date of this Rule shall be exempt from this Rule if: (A) the Allottee provides a copy of the executed Subcontract to Northern Water within nine months of the effective date of this Rule, and (B) Northern Water determines the Subcontract does not contain terms or conditions that violate statutes, rules that existed at the time of the Subcontract, or applicable contract conditions associated with the beneficial use of C-BT Project water. Northern Water will take no enforcement action regarding a Subcontract that has been provided pursuant to this Rule until Northern Water's review of the Subcontract is complete and Northern Water either: confirms in writing that the Subcontract is exempt from this Rule, or informs the Allottee in writing of the violation(s). ~~regulations, policies, and procedures of Northern Water concerning beneficial use and ownership limitations that existed at the time the Subcontract was signed.~~ Northern Water will only consider a Subcontract exempt from this Rule if Northern Water has affirmatively stated so in writing. ~~If necessary, Northern Water will inform the Allottee who is a party to an existing Subcontract of those terms and conditions of the Subcontract that violate rules, regulations, policies and procedures of Northern Water concerning beneficial use and ownership limitations.~~ Once notified by Northern Water of a violation(s), the Allottee shall have six months to amend the Subcontract to correct the violation(s).

4.0 ~~Application Seeking Request for Exemption From or~~ Approval of a Subcontract(s)

- 4.1 An Allottee seeking exemption from or approval of a Subcontract(s) must follow the Procedures for this Rule ~~when submitting an application for the approval of the Subcontract to Northern Water~~. The administrative fee assessed by Northern Water to review ~~an application for~~ a Subcontract shall be determined as described in the Procedures to this Rule.

5.0 Criteria Used for Subcontract Review and Approval

- 5.1 The Board's review and approval of Subcontracts shall be limited and applicable only to those terms and conditions of the Subcontract which pertain to the beneficial use of water yielded by an Allotment Contract, shall be on a specific case-by-case basis, and shall incorporate consideration of all rules, regulations, policies and procedures that govern, or are related to, the approval and issuance of an Allotment Contract.
- 5.2 The Board may approve or deny approval of any Subcontract for the beneficial use of water yielded by an Allotment Contract. In the event the Board of Directors denies approval of such a Subcontract, the Board shall state the bases for the denial.
- 5.3 The Board may approve a Bridge Supply Subcontract or Other Subcontract for a maximum term of five years except as provided below. The Board will consider requests to reapprove a Subcontract if its previous approval has expired or will expire. The Board is not obligated to reapprove a Subcontract. However, if a Subcontractor identifies a specific water supply project that is under development and will provide a future water supply for the Subcontractor, the Board may approve a Bridge Supply Subcontract for a term longer than five years. The term for any such Subcontract approved for longer than five years may be for: (A) a fixed term reasonably anticipated to coincide with the completion of the water supply project; or (B) an indefinite term to terminate upon completion of the water supply project. In any event, a Subcontract shall not exceed five years following the denial of an indispensable permit approval for said water supply project, or the Subcontractor's decision not to move forward with or continue its participation in the water supply project. Completion of a water supply project shall mean completion of project infrastructure and operation of the project as necessary to produce the anticipated water supply yield of the Project.
- 5.4 The Board will only consider approval of a Subcontract if the Subcontractor meets the following minimum requirements:
- 5.4.1 The C-BT Project water described in the Subcontract will be considered in calculations of AFU ownership limitations for the Subcontractor if water will be used for non-irrigation purposes. The Subcontractor cannot exceed its limitation for the ownership of Allotment contracted AFUs when considering both AFUs owned through its Allotment Contract(s) and the

water represented by the Subcontract. In the case of a water supply emergency which temporarily affects the Subcontractors' base supply, the Board may choose to consider a proposed Subcontract of specified and limited duration disregarding AFU ownership limitations.

- 5.4.2 The Northern Water 1995 Interim Ownership Limitation Guidelines, or whatever then existing Northern Water ownership limitation policy or rule, will be used as the primary criteria in evaluating Subcontractor ownership limitations when the Subcontractor is using water for purposes other than irrigation. A simplified example of a C-BT ownership limitation calculation is included in Appendix A to this Rule. C-BT ownership limitations shall not be applied when the beneficial use of the C-BT Project water by the Subcontractor is for irrigation.
- 5.4.3 The Subcontractor must be in compliance with the conditions in the Northern Water 1997 Base Water Supply Policy, or with whatever then existing Northern Water base water supply policy or rule that is in place.
- 5.5 A Subcontract will only be considered for approval if the Subcontract meets the following minimum requirements:
 - 5.5.1 Requires C-BT Project water only be placed to beneficial use on land situated within the boundaries of Northern Water.
 - 5.5.2 Assures use will be for a beneficial use(s) approved by Northern Water.
 - 5.5.3 Requires that C-BT Project water not be reused, and any return flows resulting from its initial use, if and when they occur, must be returned within the boundaries of Northern Water.
 - 5.5.4 ~~The Subcontract is based on AFUs. Includes all of the C-BT Project water AFUs within the related Allotment Contract.~~
 - 5.5.5 ~~Is the only Subcontract associated with a specific Allotment Contract. The AFUs associated with the proposed Subcontract plus the aggregated sum of AFUs associated with all previous Subcontracts associated with a specific Allotment Contract do not exceed the total number of AFUs associated with that Allotment Contract.~~
 - 5.5.6 Does not create a joint or undivided interest or other form of concurrent property interest in a C-BT Project Allotment Contract beyond that which is provided in the Allotment Contract.
 - 5.5.7 Does not include a provision requiring the Allotment Contract be transferred to the Subcontractor unless such transfer is contingent upon the review and approval by the Board.

- 5.5.8 Confirms that the Allottee issuing the Subcontract will not rent C-BT Project water to the Subcontractor outside the terms of the proposed Subcontract or through previously entered Subcontracts.
- 5.5.9 Limits the sale of the Subcontractor's base supply to a maximum of 15% during the pendency of the Subcontract and, furthermore, provides that no base supply be sold or transferred outside the boundaries of Northern Water.
- 5.5.10 Recognizes Northern Water's authority to prevent the annual certification of C-BT Project water to the Allottee's designated Account Entity if an Allottee is not in good standing with the Allotment Contract or this Rule.
- 5.5.11 Recognizes Northern Water will not arbitrate any disputes, if such occur, between the Allottee and Subcontractor.
- 5.5.12 Provides adequate terms and conditions needed to address existing or future encumbrances on the subject Allotment Contract and specifically eliminates any and all liability to Northern Water resulting from the enforcement of those encumbrances by the Allottee, the Subcontractor, or other parties that may hold or have interest in such encumbrances.
- 5.5.13 Does not create liability for Northern Water.
- 5.5.14 Does not contain terms or conditions that violate rules, regulations, policies and procedures of Northern Water.
- 5.6 In addition, the Board will only consider an Interruptible Supply Subcontract that meets the following additional minimum requirements:
 - 5.6.1 When the Allottee's use is irrigation and the Subcontract use is non-irrigation, the Subcontract must limit the Subcontractor's use of the associated C-BT Project water to a maximum of 3 out of 10 years (rolling 10-year period) except as provided for as follows: On a case by case basis, the Board may consider approval of a Subcontract that allows the Subcontractor's use of the associated C-BT Project water more than a maximum of 3 out of 10 years if the Subcontract contains additional requirements prior to the Subcontractor's usage more than a maximum of 3 out of 10 years. These requirements may include, but are not limited to: (A) restrictions on lawn watering to less than 3 days per week; (B) a Governor-issued drought declaration for the water supplier's geographical region; or (C) a C-BT quota based upon supply limitations rather than anticipated demand. However, when the Allottee is using water for non-irrigation purposes and Subcontracting for irrigation purposes, there will not be a limit on the number of years water can be used for irrigation purposes.

- 5.6.2 Is the only Subcontract between the Allottee and Subcontractor associated with a specific tract of irrigated land.

6.0 Enforcement Action

- 6.1 In the event Northern Water learns of a Subcontract for the beneficial use of water yielded by an Allotment Contract that has not been previously exempted or approved by the Board in accordance with Section 3.1 or been exempted within the allowable period of time described in Section 3.2 of this Rule, Northern Water shall deny delivery of C-BT Project water to the Subcontractor or beneficiary of the Subcontract. Further, Northern Water will deny the transfer and delivery of C-BT Project water that would result in the Subcontractor receiving the benefits of the Subcontract by any other means of transfer, including but not limited to, two-party or multiple-party transfers that may utilize the annual rental or lease program administered by Northern Water.

7.0 Other Considerations Associated with Subcontracts

- 7.1 The C-BT Project water associated with a Subcontract will not be considered a demand or commitment to serve in the calculations to determine the ownership limitations for C-BT Project water for the Allottee.
- 7.2 Use of water by the Subcontractor shall be subject to a Northern Water Rule 11 Charge if applicable.
- 7.3 The Board will not approve transfer of an Allotment Contract or any of the associated AFUs of an Allotment Contract until any and all encumbrances represented by the Subcontract are either released, or the new Allottee accepts the encumbrances represented by the Subcontract.
- 7.4 Northern Water shall notify the Subcontractor of any Allotment Contract Transfer applications received from the Allottee that are connected to the Subcontract. In the event all or a portion of an Allotment Contract associated with a Subcontract is being considered for forfeiture by the Board, Northern Water shall notify the Subcontractor of the hearing and subsequent decision concerning forfeiture, but will not recognize the Subcontract as an encumbrance on the Allotment Contract when disposing of forfeited AFUs.
- 7.5 C-BT Project water seasonally transferred from an Allottee to a Subcontractor (as described by a Subcontract) must use the same administrative procedures as seasonally transferred “rental” water. The transfer request must be accompanied by adequate documentation indicating that the seasonal transfer is associated with the specified Subcontract. The Subcontract will be considered as having been fully operated even if only a portion of the water under a Subcontract is seasonally transferred.

Appendix A - Simplified Example of A C-BT Ownership Limitation Calculation For A Hypothetical Water Supplier Who Owns 200 Units and Has a Subcontract for 100 units 3 in 10 Years

Water Supplier Information

	Average Yield (AF/YR)	Firm Yield (AF/YR)
Ditch A	100	40
Ditch B	<u>200</u>	<u>100</u>
Total	300	140

- **Current C-BT Unit Ownership is 200 units.**
- **Subcontract for 100 units 3 in 10 years. This results in 30 units available in average years and 100 units in dry years.**
- **Total Water Demand is 500 AF/YR.**

Ownership Limitation Calculation

Row	<u>Average Yield Method</u>	Formula	
A	Total Water Demand X 2		1000
B	Average Yield of Native Supplies		<u>-300</u>
C	Maximum Number of C-BT Units	A - B	700
D	Currently Owned C-BT Units		-200
E	Subcontracted C-BT Units Available on Average		<u>-30</u>
F	Additional C-BT Units	C - D - E	470

Row	<u>Firm Yield Method</u>	Formula	
A	Total Water Demand		500
B	Firm Yield of Native Supplies		<u>-140</u>
C	Maximum Volume of C-BT	A - B	<u>360</u>
D	Maximum Number of C-BT Units	C X 2	720
E	Currently Owned C-BT Units		-200
F	Subcontracted C-BT Units Available During a Dry Year		<u>-100</u>
G	Additional C-BT Units	D - E - F	420

Additional C-BT Units Available - Use the Smaller of the Average and Firm Yield Method **420**

Procedures for the Rule Governing the Subcontracting Of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts

(Effective Date: Month, Day, 2016)

1.0 Purpose of Procedures and Potential Future Modifications to the Procedures

- 1.1 To provide additional direction for implementing the Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts (Rule) (Effective Date: Month, Day, 2016).
- 1.2 To assist Allottees and other water users in understanding the administration of the Rule.
- 1.3 The Board may modify the provisions of the Procedures by a resolution or motion duly adopted at any regular Board meeting.

2.0 Definitions – Terms used in the Procedures shall have the same meaning as in the Rule governing the Subcontracting of Beneficial Use adopted concurrently with the Procedures.

3.0 Allottee Submittal Requirements and Fees

- 3.1 To facilitate the review and, if applicable, the approval of a Subcontract, adequate information and documentation must be submitted to Northern Water. Needed information and documentation include:
 - 3.1.1 Allottee name, address, contact name, contact telephone number, and contact e-mail address.
 - 3.1.2 A copy of the proposed or signed Subcontract. The Allottee may redact financial arrangements and other proprietary information from the Subcontract provided sufficient information is retained for the Board to make a determination as to whether the Subcontract is in compliance with the Rule or is exempt from the Rule.
 - 3.1.3 In accordance with Rule Section 3.2, the Allottee may submit a proposed amended draft of an existing Subcontract entered into prior to the adoption of the Rule that corrects known violations of the existing Subcontract pursuant to Rule requirements.
- 3.2 All Subcontract information and documentation shall be submitted to:

Northern Water
c/o General Manager
220 Water Avenue
Berthoud, CO 80513

3.3 Fee to Review

3.3.1 There will be no fee to review the request for exemption from the Rule.

3.3.2 The fee to review a proposed Subcontract under the Rule shall be two and one half times the fee charged for the transfer of an allotment contract or such future fee as the Board may adopt from time to time.

4.0 Request for Exemption from the Rule

4.1 Northern Water Staff Evaluation

4.1.1 Staff will assure that all necessary information has been submitted in accordance with Section 3 of the Procedures.

4.1.2 Within 30 business days following submittal staff will consider compliance with the Rule criteria. If Northern Water staff believes there is a term(s) in the Subcontract which would bar or delay the Board from a determination that the Subcontract is exempt from the Rule, staff will notify the Allottee of such term(s) and suggest or allow the Allottee to propose an alternative Subcontract term(s) to correct the violation(s). The Allottee will make the final decision as to the Subcontract (original or modified) that is submitted to the Board for consideration for exemption.

4.2. Board Consideration

4.2.1 Not later than 60 days after an initial submittal of an existing (or modified) Subcontract entered into prior to the adoption of the Rule, staff shall provide a recommendation to the Board at a regularly scheduled Board meeting whether the existing Subcontract submitted: 1) should be considered exempt from the Rule; or 2) should not be considered exempt from the Rule.

4.2.2 The Allottee or any other person or entity may make written or verbal comments to the Board concerning why the Subcontract should or should not be considered exempt from the Rule.

4.2.3 Upon review of the information and documentation provided by the Allottee, the Board shall make a determination whether the existing Subcontract is exempt from the Rule. If the Board determines the Subcontract is not exempt and violations may be corrected, it will provide direction concerning what violations of the Rule must be corrected for the Subcontract to be exempt from the Rule.

4.2.4 The Allottee shall have six months from the date of Northern Water's notice as to the exempt status to amend or modify the Subcontract to correct violations identified by the Board and resubmit a request for a Board determination that the Subcontract is exempt.

- 4.2.5 If the Subcontract that the Board exempts under the Rule has not been signed by the parties at the time of approval, the Allottee will provide Northern Water a copy of the fully executed Subcontract with all required signatures.

5.0 Request for Approval of a Subcontract in Accordance with the Rule

5.1 Northern Water Staff Evaluation

- 5.1.1 Staff will assure that the administrative fee has been paid and all necessary information has been submitted in accordance with Section 3 of these Procedures. The proposed Subcontract will not be reviewed until the administrative fee has been paid.
- 5.1.2 Within 30 business days following submittal staff will evaluate compliance with Rule and Procedures requirements. If staff believes there are violations of Rule or Procedures requirements, staff will notify the Allottee of such violations and propose, or allow the Allottee to propose, new draft language to correct the violations. The Allottee will make the final decision concerning Subcontract language that is submitted to the Board for consideration and approval.

5.2 Board Consideration

- 5.2.1 Not later than 60 days after an initial submittal staff will make recommendations to the Board concerning approving or the bases for denying approval of the Subcontract as submitted.
- 5.2.2 The Allottee or any other person or entity may make written or verbal comments to the Board concerning why the Subcontract should be approved or denied.
- 5.2.3 In accordance with the Rule the Board may approve or not approve the Subcontract. If the Board does not approve the Subcontract, it will provide the bases why the Subcontract was not approved. The Allottee may address the Board concerns and resubmit a Subcontract for approval. No additional fees will be assessed for resubmitted, modified proposed Subcontracts.
- 5.2.4 If the Subcontract that the Board approves under the Rule has not been signed by the parties at the time of approval, the Allottee will provide Northern Water a copy of the fully executed Subcontract with all required signatures.

6.0 Future Violation of the Rule and Enforcement Actions

- 6.1 Within 10 days after becoming aware of a violation, or potential violation, of the Rule Northern Water staff will provide notice of such a violation to the Allottee

and Subcontractor via certified mail. The Allottee shall respond to Northern Water in writing within 10 days of receipt of such notification describing the action the Allottee and/or Subcontractor will undertake to correct the violation. If the violation is not corrected, Northern Water staff will recommend to the Board the enforcement of the Rule. Consideration of the violation shall be placed on the agenda of the next regularly scheduled Board meeting or as soon thereafter as can be scheduled with the Allottee and other affected parties, and the Board may take action concerning staff's recommendation at that Board meeting.

DRAFT

WATER & SEWER BOARD AGENDA AUGUST 17, 2017

ENCLOSURE _____

NO ENCLOSURE ___X___

ITEM NUMBER: 10

TITLE: SUCH OTHER BUSINESS

RECOMMENDATION:

ADDITIONAL INFORMATION: