

WATER & SEWER BOARD AGENDA

Wednesday, October 19, 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. Report: Coalition for the Poudre River Watershed Update on Department of Local Affairs' Disaster Recovery Resilience Planning Lower Poudre River Flood Recovery & Resilience Master Plan Grant
5. Action: Approve Cash-In-Lieu
6. Report: Quarterly Water Court Update
7. Action: Recommend Approval of the Colorado Department of Public Health and Environment Milton Seaman Water Supply Project, Billing Agreement for the Section 401 of the Clean Water Act, State Water Quality Certification and Recommend the Same to Council
8. Action: Recommend Approval of the Allocation of Cost and Reimbursement of Expense Agreement for the Larimer & Weld Irrigation Companies
9. Executive Session
10. Legal Report
11. Director's Report
 - Appointment of Northern Colorado Water Conservancy District Board of Directors
 - 5 Shares Mountain and Plains Irrigation Company Closed
 - Distribute Department Organizational Chart to Board
 - State Land Board Milton Seaman Reservoir Lease Agreement



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.

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 Shannon Metcalf at 970-350-9818.

City of Greeley
Water and Sewer Board
Minutes of September 21, 2016
Regular Board Meeting

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:03 p.m. on Wednesday, September 21, 2016.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Tony Miller, Manual Sisneros, Mayor Norton, City Manager Roy Otto, and Finance Director Victoria Runkle

Water and Sewer Department staff:

Water and Sewer Director Burt Knight, Deputy Director of Water Resources Eric Reckentine, Budget Analyst Erik Dial, Operations Manager Bob Neal, Chief Engineer Adam Prior, Senior Administrative Specialist Shannon Metcalf, and Administrative Specialist Angel Salazar

Legal Counsel:

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

Other Guests: Justice Greg Hobbs and Michael Welsh

2. Approval of Minutes

Mr. Miller moved and Mr. Todd seconded to approve the September 21, 2016 Water and Sewer Board meeting minutes as presented. The motion carried 5-0.

3. Approval of and/or Additions to Agenda

Mr. Knight stated that Item 7 on the Agenda will be moved to Item 5A.

4. Report: Greeley Water Book Update

Mr. Knight introduced the Greeley Water Book Authors Justice Greg Hobbs and Mr. Michael Welsh. Justice Hobbs began by stating that the book is divided into four categories which include Governance, Cooperation, Resiliency, and Public Service. The presentation included discussion on each individual category.

Doug Marek joined the meeting at 2:25pm

Justice Hobbs closed by thanking the Board and staff for taking the time to participate in these interviews. Chairman Evans agreed with Justice Hobbs opinion on the importance of documenting this history. He then thanked the Authors for their time and dedication to this project.

Justice Hobbs and Mr. Welsh left the meeting at 2:40pm.

5. Report: Bellvue Transmission Line and 5MG Tank Update

Mr. Neal gave an update on the status of two current projects. The first being the construction of the 5MG tank. He explained that between June and August, the slab was reinforced, the forming walls were poured, the interior walls were constructed, post tensioning was completed, the conduits were filled with restraining bars, and the roof was formed. He then presented photos of the work completed to date on the Bellvue transmission line.

5a. Action: Approve Danielson Purchase Contract, Ratify Purchase Price

Mr. Reckentine presented a review of the Danielson Purchase and Sale Agreement (PSA) that was previously approved by the Board. He stated that the appraised value of the property is less than the purchase price. Per the PSA, if the property's valuation is less than the purchase price, then Greeley has the sole option and election to terminate the PSA. In the alternative, the Board may approve the difference in value and waive the pre-closing condition that property be equal to or greater than the purchase price. Due to recent market trends in the price of Water Supply and Storage Company Shares, Mr. Reckentine recommended that the Board approve the difference and waive the condition. Mayor Norton asked Mr. Reckentine to further describe the market trends. Mr. Reckentine recommended that a more specific discussion on current market trends be held in executive session.

6. Executive Session:

At 2:53 p.m. Chairman Evans made a motion to move into executive session to address the following matters:

1. Conferences with an attorney for the purpose of receiving legal advice on specific legal questions und C.R.S. §24-6-402(4)(b) and Greeley Municipal Code 2.04.020(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).

3. 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).

Chairman Evans identified the following topics for discussion:

1. Legal advice concerning raw water dedication provisions of the Leprino Development Agreement and Industrial Water Bank.
2. Matters related to the appraised Sale of the pending Purchase and Sale of the Danielson Inc. Property.

Mr. Miller seconded the motion. The motion carried 5-0.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Tony Miller, Manual Sisneros, Mayor Tom Norton, City Manager Roy Otto, Director of Finance Victoria Runkle, Director of Water and Sewer Burt Knight, Deputy Director of Water Resources Eric Reckentine, City Attorney Doug Marek, Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Daniel Biver, Environmental and Water Resources Attorney Andy Nicewicz and Water and Sewer Board Counsel Jim Witwer

A portion of this executive session was unrecorded because the discussion constituted attorney-client privileged communication.

The executive session ended at 3:44 p.m. The regular meeting resumed with Item 5a A motion was made by Mr. Miller, seconded by Mr. Sisneros, to approve the difference between the Purchase Price and the appraised value of the Property and waive the closing contingency that the Property valuation being equal to or greater than the Purchase Price. The motion carried 5-0.

7. Action: Approve 5th Interim Agreement Amendment – Evans Storage Allocation Transfer for Windy Gap and Recommend to Council

Mr. Reckentine stated that The Fifth Interim Agreement Amendment allows for the reversion of the storage allocation from the Town of Evans back to the City of Greeley, based on provisions of previous allocation agreements and the performance provision the Town of Evans Windy Gap Purchase Agreement. The WGF Enterprise estimated that Greeley's pro rata share of the costs of the Fifth Phase of the Project was \$1,118,956 for the 2016 calendar year for the original 7,000 acre feet storage allocation. Greeley has paid the WGF Enterprise its pro rata share of the 2016 calendar year costs.

The Agreement is amended to provide that Participant's storage capacity in the Project shall be 8,750 acre feet of storage, an increase of 1,750 acre feet, showing the appropriate increase provided by the Town of Evans storage reallocation. The 2016, Greeley budget is sufficient to cover the additional expense.

Vice Chairman Todd made a motion to recommend that City Council approve the Fifth Interim Agreement between the Evans Storage Allocation Transfer for Windy Gap. The motion was seconded by Mr. Otis. The motion carried 5-0.

8. Action: Approve Acquisition of Fabrizio/Heinze Farm and ½ Share WSSC

Mr. Reckentine explained that the Fabrizio/Heinze property contains approximately 125± acres of land, located in Weld County, Colorado and one half shares of the Water Supply & Storage Company. The total purchase price for the Property is \$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 Vice Chairman Todd, seconded by Mr. Miller 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 5-0.

9. Legal Report:

Mr. Witwer stated that staff and counsel recommend filing no statement of opposition this month.

10. Director's Report:

Mr. Reckentine noted the following:

- Varra Farm and 2 Shares WSSC Closed
- Mitigation Property North Fork Cache La Poudre River Licenses Agreement Executed. The City recently signed a licenses and access agreement with a property owner in Livermore to evaluate the property for Preble's Mouse Habitat.
- The Leprino Produced Water claim engineering report and application have been sent to Leprino. Greeley counsel and staff are waiting on response from Leprino.

- Greeley Wins Best Water in the Rocky Mountain Region at AWWA Conference
Mr. Knight congratulated staff on this award. The water samples were submitted from three different states and Greeley was chosen for the best taste. The water sample was taken from the Bellvue Treatment Plant.

There being no further business, Chairman Evans adjourned the meeting at 4:00 p.m.

Harold Evans, Chairman

Angel Salazar, Administrative Specialist

WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 4

TITLE: REPORT: COALITION FOR THE POUFRE
RIVER WATERSHED UPDATE ON
DEPARTMENT OF LOCAL AFFAIRS'
DISASTER RECOVERY RESILIENCE
PLANNING LOWER POUFRE RIVER FLOOD
RECOVERY & RESILIENCE MASTER PLAN
GRANT

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

The Executive Director of the Coalition for the Poudre River Watershed will provide an update on a recently obtained grant from Department of Local Affairs' that will assist the City of Greeley and other local entities in assessing and developing a resilience plan and Flood Recovery & Resilience Master Plan for the lower reach of the Cache la Poudre River.

WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 5

TITLE: ACTION: APPROVE CASH-IN-LIEU

RECOMMENDATION: APPROVE CASH-IN-LIEU POLICY AS
RECOMMDED

ADDITIONAL INFORMATION:

Please see the attached memorandum for details.



MEMORANDUM

To: Water and Sewer Board

From: Danielle Snyder, Water Resources Analyst

Date: October 10, 2016

Re: Colorado Big Thompson (C-BT) project water applications for Change of Water Allotment Contracts

ISSUE:

The C-BT *Change of Water Allotment Contracts* for July, August, and September 2016 have been published. The average market price per C-BT unit over the last 36 months will be used as an indicator for the City of Greeley Water and Sewer Board at the October Board Meeting to set the City’s cash in-lieu rate.

BACKGROUND:

In the month of **July 2016**, the NCWCD Board reviewed 4 applications for change of water allotment contracts, totaling 84 units. Transfers to cities, towns and rural domestic water providers totaled 5 units, of which 2 units were purchased.

| Purchaser | Number of Units Purchased | Purchase Price per Unit | Total Purchase Price | Monthly Average Purchase Amount per Unit |
|-----------|---------------------------|-------------------------|----------------------|--|
|-----------|---------------------------|-------------------------|----------------------|--|

July 2016

| | | | | |
|--------------------------------------|---|-------------|-------------|-------------|
| Fort Collins-Loveland Water District | 2 | \$25,000.00 | \$50,000.00 | |
| July Totals | 2 | | \$50,000.00 | \$25,000.00 |

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.

In the month of **August 2016**, the NCWCD Board reviewed 2 applications for change of water allotment contracts, totaling 106 units. Transfers to cities, towns and rural domestic water providers totaled 106 units, of which 106 units were purchased.

| Purchaser | Number of Units Purchased | Purchase Price per Unit | Total Purchase Price | Monthly Average Purchase Amount per Unit |
|-----------|---------------------------|-------------------------|----------------------|--|
|-----------|---------------------------|-------------------------|----------------------|--|

August 2016

| | | | | |
|--------------------------------|------------|-------------|-----------------------|--------------------|
| City of Broomfield | 100 | \$26,000.00 | \$2,600,000.00 | |
| Little Thompson Water District | 6 | \$26,500.00 | \$159,000.00 | |
| Aug Totals | 106 | | \$2,759,000.00 | \$26,028.30 |

In the month of **September 2016**, the NCWCD Board reviewed 18 applications for change of water allotment contracts, totaling 403 units. Transfers to cities, towns and rural domestic water providers totaled 214 units, of which 208 units were purchased.

| Purchaser | Number of Units Purchased | Purchase Price per Unit | Total Purchase Price | Monthly Average Purchase Amount per Unit |
|-----------|---------------------------|-------------------------|----------------------|--|
|-----------|---------------------------|-------------------------|----------------------|--|

September 2015

| | | | | |
|------------------------------------|------------|-------------|-----------------------|---------------------|
| Town of Frederick | 6 | \$26,500.00 | \$159,000.00 | |
| Town of Frederick | 5 | \$26,000.00 | \$130,000.00 | |
| Town of Frederick | 3 | \$26,000.00 | \$78,000.00 | |
| Town of Windsor | 1 | \$26,500.00 | \$26,500.00 | |
| Town of Windsor | 2 | \$26,500.00 | \$53,000.00 | |
| Central Weld County Water District | 1 | \$25,784.00 | \$25,784.00 | |
| Central Weld County Water District | 50 | \$25,784.00 | \$1,289,200.00 | |
| Town of Kersey | 10 | \$27,000.00 | \$270,000.00 | |
| Town of Kersey | 10 | \$27,000.00 | \$270,000.00 | |
| City and County of Broomfield | 20 | \$25,750.00 | \$515,000.00 | |
| City and County of Broomfield | 100 | \$26,000.00 | \$2,600,000.00 | |
| September Totals | 208 | | \$5,416,484.00 | \$ 26,040.79 |

Over the 36 month period from **October 2013 through September 2016**, the Northern Colorado Water Conservancy District (NCWCD) Board reviewed 224 applications for change of water allotment contracts, totaling 5,716 units. Transfers to cities, towns and rural domestic water providers totaled 2,925 units, of which 2,901 units were purchased.

RECOMMENDATIONS:

Cash-in-lieu is currently set at \$32,000 per acre-foot. The total average cost over the 36 month period from October 2013 through September 2016 was \$25,019 per unit or the equivalent of \$33,000 per acre-foot. Staff recommends setting cash-in-lieu at \$33,000 per acre-foot.

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WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 6

TITLE: REPORT: WATER COURT CASE &
 OPPOSITION

RECOMMENDATION: INFORMATIONAL 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: October 19th, 2016
RE: Water Court Cases Update, 3rd Quarter

This memorandum is a quarterly review of the Water and Sewer Department's water court activities during the 3rd quarter of 2016 (July, August, and September). 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 August, Greeley has stipulated to five cases and filed three statements of opposition, therefore the current number of pending Water Court cases where Greeley is an opposer is 19. This is a 30% decrease from the end of 2015 when Greeley was an opposer in 27 Water Court Cases.

Cases stipulated:

15CW3053 (City of Fort Collins & Platte River Valley Authority)
15CW3062 (City of Fort Collins exchange diligence)
14CW3175 (United Water exchange case: *Applicants requested dismissal of their application claiming they no longer need the water rights*)
15CW3046 (City of Loveland)
15CW3095 (The New Cache la Poudre Irrigating Company)

Cases entered:

16CW3075 (Sorin Natural Resources exchange case)
16CW3087 (Community Foundation Trust)
16CW3093 (William O. and Paulette M. Seaworth)

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:

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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 have continued to work on addressing opposers concerns and have reached settlement with all opposers except the Cache La Poudre Water Users Association. They are reviewing the latest decree and we hope to have a stipulation from them soon.

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. Opposers have until November 7th to provide comments on the proposed engineering and decree.

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 continuously 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. A proposed decree was circulated and opposers have until October 20th to provide comments.

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 sent a preliminary engineering report and draft application to Leprino for their review. We are in the process of coordinating a meeting with both parties to discuss any issues so we can move forward with filing the application.

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.

LEGAL & ENGINEERING EXPENSES:

The Water Resource Division’s outside legal and engineering expenses for the 3rd quarter of 2016 totaled \$96,992. The total spent for the year to date is \$294,990 which is 107% 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 |

3rd quarter

| | |
|----------------------|------------------|
| Legal expenses | \$ 69,713 |
| Engineering expenses | \$ 27,279 |
| Total | \$ 96,992 |

WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 7

TITLE: ACTION: RECOMMEND APPROVAL OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MILTON SEAMAN WATER SUPPLY PROJECT, BILLING AGREEMENT FOR THE SECTION 401 OF THE CLEAN WATER ACT, STATE WATER QUALITY CERTIFICATION AND RECOMMEND THE SAME TO COUNCIL

RECOMMENDATION: RECOMMEND APPROVAL OF THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MILTON SEAMAN WATER SUPPLY PROJECT, BILLING AGREEMENT FOR THE SECTION 401 OF THE CLEAN WATER ACT, STATE WATER QUALITY CERTIFICATION AND RECOMMEND THE SAME TO COUNCIL

ADDITIONAL INFORMATION:

City Staff is requesting that the City of Greeley Water and Sewer Board approve and recommend the same to City Council a billing agreement with the Colorado Department of Public Health and Environment, Water Quality Control Division (division). The Division has been asked to review the water quality data analysis and modeling being used for the Milton Seaman Water Supply Project (MSWSP) Environmental Impact Statement (EIS) to ensure the information used in the analysis can also be used in pursuit of a 401 Water Quality Certification (401 certification).

For projects requiring 401- certification, the division is now required to categorize projects into a tier ranging from one through four based on project complexity pursuant to Colorado regulation 25-8-502 C.R.S. and House Bill 15-1249 (1.2). The division has determined that due to the high degree of complexity, the increased potential for water quality impacts and the significant level of public participation regarding this project, that the MSWSP 401 certification review is a Tier 4 project.

Due to these project challenges, the division will be entering into a contract with a consultant(s) to assist us in the analysis of the water quality data, models and technical reports. The MSWSP will require division staff and contractor time to review technical information and reports in support of the 401 water quality certification. For Tier 4 projects, the applicant is required to pay the actual review costs based on expended hours.



Dedicated to protecting and improving the health and environment of the people of Colorado

October __ , 2016

City of Greeley
Attn: Eric Reckentine, Deputy Director of Water Resources
1100 10th Street, Suite 300
Greeley, CO 80631

Re: Milton Seaman Water Supply Project, Billing Agreement for the Section 401 of the Clean Water Act, State Water Quality Certification

Dear Mr. Reckentine:

The Colorado Department of Public Health and Environment, Water Quality Control Division (Division), has been asked to review the water quality data analysis and modeling being used for the Milton Seaman Water Supply Project (MSWSP) Environmental Impact Statement (EIS) to ensure the information used in the analysis can also be used in pursuit of a 401 Water Quality Certification (401 certification). For projects requiring 401 certification, the division is now required to categorize projects into a tier ranging from one through four based on project complexity pursuant to Colorado regulation 25-8-502 C.R.S. and House Bill 15-1249 (1.2). The division has determined that due to the high degree of complexity, the increased potential for water quality impacts and the significant level of public participation regarding this project, that the MSWSP 401 certification review is a Tier 4 project. Due to these project challenges, the division will be entering into a contract with a consultant(s) to assist us in the analysis of the water quality data, models and technical reports. The consultant shall be a contractor for the Division, and the City of Greeley shall not have any obligation to or contractual relationship with the consultant. The MSWSP will require Division staff and contractor time to review technical information and reports in support of the 401 water quality certification. For Tier 4 projects, the applicant is required to pay the actual review costs based on expended hours. The exact fees are unknown at this time, but the City of Greeley will be informed once the fees are determined.

The City of Greeley, the applicant, will agree to pay these fees based on hours worked by both the Division's consultant and Division staff, or the Division will cease participation in the EIS review process leading to the 401 application, whichever is applicable. Division staff can include administrative support and fiscal staff. Acceptance and signature of this letter by the applicant will allow the division to bill for work on review and comment of the MSWSP EIS and 401 certification. For this service, the division will bill the applicant's fees on a monthly basis when work is performed on the MSWSP. We estimate that the review and administrative costs will not exceed a cumulative amount of \$20,000 for the time period of July 1, 2016 through June 30, 2017. The division will revisit the work and fees quarterly to determine if an adjustment is warranted. If an adjustment is warranted during the time period of July 1, 2016 through June 30, 2017, or if additional work is needed beyond June 30, 2017, a new billing



agreement will be provided for your signature. If payment is not received, the Division will cease participation in the review and certification process.

If you wish for the Division to withdraw from participation in the MSWSP EIS process or review of the 401 certification application, please send the Division a separate notice to that effect and we will discontinue the review.

Sincerely,

Aimee Konowal
Watershed Section Manager
Water Quality Control Division

As an authorized representative of the City of Greeley, the City of Greeley hereby agrees to the billing charges as described above and agrees to pay these charges when invoiced.

THE CITY OF GREELEY, COLORADO, a
Colorado home rule municipal corporation

ATTEST:

Name: _____
Title: City Clerk
Date: _____

By _____
Name: _____
Title: Mayor
Date: _____



WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 8

TITLE: ACTION: RECOMMEND APPROVAL OF THE
ALLOCATION OF COST AND
REIMBURSEMENT OF EXPENSE
AGREEMENT FOR THE LARIMER & WELD
IRRIGATION COMPANIES

RECOMMENDATION: RECOMMEND APPROVAL OF THE
ALLOCATION OF COST AND
REIMBURSEMENT OF EXPENSE
AGREEMENT FOR THE LARIMER & WELD
IRRIGATION COMPANIES

ADDITIONAL INFORMATION:

City of Greeley Staff is recommended that the City of Greeley water and sewer Board approve a Cost and Reimbursement Agreement between the Larimer & Weld Irrigation Company (“LWIC”), Larimer & Weld Reservoir Company (“LWRC”), and WRCC, Inc., (“WRCC”), (collectively, “the Companies”), and The City Of Greeley (“Greeley”).

Greeley is in the process of securing additional water supplies sufficient to meet its 2060 projected population demands. To this end, Greeley has acquired stock in each of the Companies. Water rights decreed to the Companies were originally decreed for agricultural irrigation purposes. In order that the water represented by such water rights may be useful to Greeley, it is necessary for Greeley to obtain a decree from the Water Court changing the decreed use of such water from agricultural to municipal purposes, as well as seeking changes in points of diversion.

In order to proceed with its proposed Application, Greeley desires access to certain records of the Companies. Greeley acknowledges that this will require the Companies to dedicate legal, engineering, and staff time and, as a result, the Companies will incur certain costs. Greeley desires and intends to reimburse the Companies for such costs pursuant to the terms of this Agreement.

AGREEMENT
FOR THE ALLOCATION OF COSTS AND REIMBURSEMENT OF EXPENSES

THIS AGREEMENT FOR THE ALLOCATION OF COSTS AND REIMBURSEMENT OF EXPENSES ("Agreement") is made effective as of the ____ day of _____, 2016, by and among the LARIMER & WELD IRRIGATION COMPANY ("LWIC"), LARIMER & WELD RESERVOIR COMPANY ("LWRC"), and WRCC, Inc., ("WRCC"), (collectively, "the Companies"), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation ("Greeley"). These parties may be collectively referred to as "the Parties."

RECITALS

- A. The Companies are Colorado mutual ditch companies and nonprofit corporations. LWIC owns and operates the Larimer & Weld Canal. LWRC owns and operates Terry Lake. WRCC owns and operates the Poudre Valley Canal and a number of reservoirs connected with the Companies.
- B. Greeley owns and operates a municipal water system, portions of which are located within the Poudre River Basin.
- C. Greeley is in the process of securing additional water supplies sufficient to meet its 2060 projected population demands. To this end, Greeley has acquired stock in each of the Companies.
- D. Water rights decreed to the Companies were originally decreed for agricultural irrigation purposes. In order that the water represented by such water rights may be useful to Greeley, it is necessary for Greeley to obtain a decree from the Water Court changing the decreed use of such water from agricultural to municipal purposes, as well as seeking changes in points of diversion.
- E. Pursuant to the Bylaws of the Companies, Greeley must make written application to the Companies' Board of Directors as part of its due diligence before it can proceed with a change case in the Water Court.
- F. In order to proceed with its proposed Application, Greeley desires access to certain records of the Companies. Greeley acknowledges that this will require the Companies to dedicate legal, engineering, and staff time and, as a result, the Companies will incur certain costs.
- G. Greeley desires and intends to reimburse the Companies for such costs pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, the parties hereto mutually agree as follows:

1. Incorporation. The Recitals set forth above are accurate and are incorporated into this Agreement.

2. Information Requests. Greeley shall submit information requests pursuant to this Agreement on the form developed by the Companies for such purpose, which is attached hereto as **Exhibit A**.

3. Term; Termination. This Agreement shall commence the latest date upon which both parties have signed this Agreement (“Effective Date”) and terminate on December 31, 2017. This Agreement may be terminated by either party at any time, upon provision of thirty (30) days' notice in writing to the other party.

4. Reimbursement of Direct Costs. Greeley shall reimburse the Companies for all “Direct Costs” incurred by the Companies on Greeley’s behalf in connection with this Agreement. Direct Costs are those costs and expenses that specifically relate to activities and services requested by Greeley and performed on its behalf. Such Direct Costs shall include, but are not limited to, administrative services, such as researching, compiling, and/or copying Companies’ records, and/or employees who provide technical services, such as verbal or written operational and water rights administration information, and legal and/or engineering expenses incurred by the Companies in responding to such requests. Direct Costs shall also include those overhead expenses incurred by the Companies on Greeley’s behalf.

5. Payment of Overhead Costs. Greeley shall also pay the actual or agreed upon amount of certain overhead costs incurred. The actual or agreed upon amount of overhead costs for which Greeley is obligated to pay shall be as follows:

- a. Photocopying at \$0.10 cents per page;
- b. Mileage at \$0.58 cents per mile;
- c. Postage at actual cost (with itemized receipt);
- d. CDs or USB Flash Drives at actual cost (with itemized receipt); and
- e. Company staff time at the rate of \$50.00 per hour.

6. Payment. The Companies shall submit to Greeley monthly invoices (“Monthly Invoice”) detailing the prior month’s Direct Costs incurred by the Companies. Within thirty (30) days of receipt of each Monthly Invoice, Greeley shall reimburse the Companies for the total amounts due. Amounts in arrears for more than thirty (30) days shall earn interest at the rate of 1% per month.

7. Notices. Any notice or other communication given pursuant hereto relating to this Warranty shall be in writing and shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified below; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at the address specified below; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first-class mail, sent by

registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified below; or (iv) on the date and at the time shown on the facsimile or electronic mail message if telecopied or e-mailed to the number or address specified below and receipt of such telecopy or electronic mail message is acknowledged:

If to the Companies, to:

Kim Nelson
Larimer & Weld Irrigation Office
106 Elm Avenue
Eaton, CO 80615
Telephone: 970-454-3377
Facsimile: 970-454-0154
E-mail: knelson@eatonditch.com

With a copy by the same delivery method, to:

Timothy J. Dow
The Dow Law Firm, LLC
Fort Collins, CO 80524
Telephone: 970-498-9900
Facsimile: 970-498-9966
E-mail: dow@dowlawfirm.com

If to Greeley, to:

City of Greeley
Attention: Director, Water and Sewer
1100 10th Street, 3rd Floor
Greeley, CO 80631
Telephone: (970) 350-9812
Facsimile: (970) 350-9805
E-mail: _____

With a copy by the same delivery method, to:

City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
Facsimile: (970) 350-9763
E-mail: _____

Any such addressee may change its address for such notices to the other addressees in the United States as such addressee shall have specified by written notice given as set forth above.

8. TABOR. This Agreement shall not be construed or interpreted as creating, directly or indirectly, a general obligation debt, multi-fiscal year obligation or other financial obligation whatsoever of Greeley within the meaning of any constitutional or statutory limitations or requirements, nor shall this Agreement directly or indirectly obligate Greeley to make payments beyond those appropriated for the current fiscal year. Greeley's obligation to pay any amount pursuant to this Agreement shall not constitute a mandatory charge against or liability or obligation of Greeley in any ensuing fiscal year beyond the current fiscal year of Greeley. No provision of the Agreement shall be construed to pledge or to create a lien on any class or source of the funds of Greeley. In the event that funds are not appropriated for the ensuing fiscal year by December 15th each year this Agreement is in effect, Greeley shall notify the Company in writing and this Agreement shall terminate on the last day of the current fiscal year (i.e. December 31, 2016).

9. Assignment. This Agreement shall not be assignable by either party.

10. No Agency, Joint Venture or Other Relationship. The Parties acknowledge that they will not hold themselves out as an agent, partner or co-venturer of the other and that this Agreement is not intended and does not create an agency, partnership, joint venture or any other type of relationship except the contract relationships established hereby.

11. Colorado Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed, construed, interpreted, applied and enforced in accordance with the laws of the State of Colorado. In the event of a dispute or alleged breach arising under this Agreement, venue for any resulting arbitration or litigation shall be exclusively proper in Weld County, Colorado. Should such a dispute arise, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, in addition to such other relief to which the prevailing party may be entitled.

12. Counterpart Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one (1) and the same instrument, and either of the parties hereto may execute this Agreement by signing any such counterpart. Signatures may be evidenced by copies transmitted via facsimile or electronic mail.

13. Entire Agreement. This Agreement sets forth the entire agreement between the Parties. There have been no additional oral or written representations or agreements regarding the Agreement.

14. No Waiver of Governmental Immunity/No Third Party Beneficiary. This Agreement shall not create any duty of care or liability with respect to any person or entity not a party to this Agreement, or waive any of the privileges or immunities of the Parties or their officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the date first set forth above.

WRCC, Inc.

By: _____
Russell Leffler, President

Larimer & Weld Irrigation Company

By: _____
Lynn Fagerberg, President

Larimer & Weld Reservoir Company

By: _____
Russell Leffler, President

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

APPROVED AS TO SUBSTANCE:

By _____
City Manager

Date: _____

AVAILABILITY OF FUNDS:

By _____
Director of Finance

APPROVED AS TO LEGAL FORM:

By _____
City Attorney

RECOMMENDED:

By _____
Water and Sewer Board Chairman

Irrigation Office

106 ELM AVENUE
info@eatonditch.com

PO BOX 206
EATON, COLORADO 80615

TELEPHONE 970-454-3377
FAX 970-454-0154

Larimer & Weld Irrigation Co. • Larimer & Weld Reservoir Co. • WRCC, Inc. • Owl Creek Supply & Irrigation Co.
Divide Canal & Reservoir Co. • Lucas Lateral Ditch Co. • Town Boyd Lateral Co. • For Far Lateral Co.
Gale Lateral Co. • Montgomery Lateral • West Irrigation Co. • Decker Lateral Co. • Graham Lateral Co.

MUTUAL DITCH COMPANY SHAREHOLDER INFORMATION REQUEST

1. I, _____, being a shareholder of _____ shares in the _____ (“Company”), request information and/or documents relative to the shareholders of the Company as follows:

2. The purpose(s) of my request is/are:

3. There must be a direct connection between the information and/or documents requested and the purpose for the request. Describe the direct connection:

4. The purpose(s) described above is/are the only purpose(s) for which this information will be used, and I acknowledge that this information will be used for no other purpose.

5. With this request the shareholder is submitting the minimum required fee of \$350.00 which is non-refundable. The shareholder agrees that if the ditch company staff is required to spend more than five (5) hours meeting this request there will be an additional charge of \$50.00 per hour. Any such additional charges shall be payable at the time the requested information is available to the shareholder.

Please notify me of the Board’s decision and action on this request by regular mail to myself at:

Address: _____ Phone: _____

_____ Fax: _____

or by e-mail to: _____

SHAREHOLDER:

Signature

Print Name Title

Date: _____

**DECISION OF BOARD OF DIRECTORS REGARDING
SHAREHOLDER INFORMATION REQUEST**

The Board of Directors acts upon the preceding Shareholder Information Request as follows:

Approved _____
Disapproved _____
Approved as Modified as follows:

BOARD OF DIRECTORS of _____:

Signature

By: _____ Date: _____
Print Name Title

**SHAREHOLDER ACKNOWLEDGMENT OF APPROVAL
REGARDING SHAREHOLDER INFORMATION REQUEST**

1. The undersigned shareholder acknowledges the approval or approval as modified by the Board of Directors with regard to the preceding Shareholder Information Request, and reaffirms that the purpose for the request and the use which will be made of the requested information is as represented in paragraph 2 of the Shareholder Information Request Form or as modified by the Board, and that no other uses will be made whatsoever.

2. The undersigned shareholder agrees that this information will be kept confidential, and that the same will not be provided, in whole or in part, to any third party without the prior approval of the Board of Directors of the Company.

3. The undersigned shareholder understands that in the event that he/she violates any of the terms and conditions of this Agreement, the Company shall be entitled to seek legal and/or equitable relief, which relief may include a forthwith injunction. The shareholder further agrees that he/she will be responsible for the payment of any attorney's fees deemed necessary and incurred by the Board of Directors of the Company in connection with seeking enforcement of this Agreement, in addition to any other damages that may be granted the Company as a result of such enforcement.

SHAREHOLDER:

Signature

Print Name

Title

Date: _____

WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 9

TITLE: EXECUTIVE SESSION

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 10

TITLE: LEGAL REPORT

POSSIBLE ACTION: STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 11

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Appointment of Northern Colorado Water Conservancy District Board of Directors
- 5 Shares Mountain and Plains Irrigation Company Closed
- Distribute Department Organizational Chart to Board
- State Land Board Milton Seaman Reservoir Lease Agreement

WATER & SEWER BOARD AGENDA OCTOBER 19, 2016

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: