

WATER & SEWER BOARD AGENDA

Wednesday, April 17, 2019
2:00 p.m.

GREELEY CITY CENTER

**1001 11TH 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 John Gates
 _____ Mr. Roy Otto _____ Mrs. Renee Wheeler
2. Approval of Minutes
3. Approval of and/or Additions to Agenda

Consent Agenda

The Consent Agenda is a meeting management tool to allow the Board to handle several routine items with one action.

The Board or staff may request an item to be “pulled” off the Consent Agenda and considered separately under the next agenda item in the order they were listed.

4. Approve Hertzke Water Lease
5. Approve Bernhardt Water Lease

End of Consent Agenda

6. Any Pulled Items from Consent Agenda
7. Approve Sheep Draw Water Lease
8. Review and Recommend to Council Lower Cache La Poudre River Monitoring Alliance MOU
9. Approve Purchase and Sale Agreement for GIC Water Rights
10. Adopt Resolution regarding Water Restrictions for Customers on Water Budget Rates
11. April Water Supply Update and Declaration of Adequate Water Year



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

12. Presentation of 2020 Preliminary Budget

13. Water Court Update

14. Executive Session

- A. Matters related to Bilateral, Non-Disclosure Agreement between the City of Greeley and the City of Thornton.
- B. Matters related to the Milton Seaman Water Supply Project.
- C. Matters related to Right of First Refusal Agreement, dated December 19th, 2014, between the City of Greeley and the Taylor & Gill Ditch Company.

15. Review and Recommend City Council approve the Bilateral, Non-Disclosure Agreement between the City of Greeley and the City of Thornton.

16. Legal Report

17. Director's Report

- 1. Leprino Tour

18. 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 Ettie Arnold at 970-350-9812.

**City of Greeley
Water and Sewer Board
Minutes of March 20, 2019
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 1:59 p.m. on Wednesday, March 20, 2019.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Robert Ruyle, Manny Sisneros, Mayor Gates, Roy Otto

Water and Sewer Department staff:

Deputy Director Water Resources Adam Jokerst, Business Manager Erik Dial, Interim Water Operations Manager/Chief Engineer Adam Prior, Water Resources Operations Manager Jennifer Petrzelka, Water Administrator I Emily Carbone, Office Manager Shannon Metcalf and Senior Administrative Assistant Ettie Arnold

Legal Counsel:

Counsel to Water & Sewer Board Attorney Jim Noble, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Environmental and Water Resources Attorney Aaron Goldman

Guests: Citizen Jack Snyder, Brown & Caldwell Consultant Mary Gearhart, Leonard Rice Engineers Senior Project Managers Katie Fendel and Carolyn Nobel

2. Approval of Minutes

Mr. Todd made a motion, seconded by Mr. Ruyle, to approve the February 20, 2019 Water and Sewer Board meeting minutes. The motion carried 5-0.

3. Approval of and/or Additions to Agenda

Item 12, Sheep Draw Water Lease and Item 16, CCWCD Presentation were removed from the agenda.

Consent Agenda

4. Action: GIC, Greeley, CCWCD Recharge Agreement Renewal

This is a renewal of a prior Recharge Agreement among the parties that was executed on October 10, 2011 and expired on July 30, 2016. The recharge agreement would allow Central to use excess capacity in the Canal No. 3, the availability of which capacity is at the discretion of GIC and the City, for the cost of \$5,000 per year plus an \$8/acre-foot running charge. The agreement would expire on October 31, 2020, with automatic annual renewals thereafter until one of the parties exercises its right to renegotiate or terminate.

Recommended action: approval of the Recharge Agreement between the Greeley Irrigation Co. (GIC), the City of Greeley, and Central Colorado Water Conservancy District (CCWCD), its Ground Water Management Subdistrict (GMS) and its Well Augmentation Subdistrict (WAS) (collectively known as Central).

5. Action: Approve Knutson Farm Lease Renewal

This agreement is for 25.7 acres for dry land farming (Dill Farm) in Weld County. The cost of the lease began at \$514 in the first year and will be adjusted annually in accordance with the Denver CPI. The Board approved this lease agreement in December 2017. The lease agreement was for one one-year term with subsequent terms of one year by mutual written agreement.

Recommended action: approval of the Farm Lease Agreement Renewal between the City of Greeley and Randall Knutson, and delegation of authority to staff to renew this lease agreement in the future, provided that the terms of the agreement remain unchanged.

6. Action: Approve Glover (F Street) Farm Lease Renewal

This agreement is for 30 acres of irrigated farmland at 4949 F Street and shares in Greeley Irrigation Company and Boyd Irrigation Company. The cost of the lease began at \$130/acre, for a total of \$3,900 in the first year, and will be adjusted annually in accordance with the Denver CPI. The Board approved this lease agreement in March 2018. The lease agreement was for one one-year term with up to four subsequent terms of one year by mutual written agreement.

Recommended action: approval of the Farm Lease Agreement Renewal between the City of Greeley and Terry Glover, and delegation of authority to staff to renew this lease agreement in the future, provided that the terms of the agreement remain unchanged.

7. Action: Approve Lebsack Farm Lease

This agreement is for 315 acres of irrigated cropland (Balmer, McWilliams and Danielson farms) in Weld County and 3 ½ shares in Water Supply & Storage Company. The proposed lease would expire December 31, 2028, with a potential renewal for one subsequent term of five years upon mutual written agreement. The Board approved a farm lease for Lebsack in March 2018, but a new agreement was needed because 40 acres of the land in Lebsack's previous lease agreement (Henry Farm) was sold to Ronald Crego in 2018. The annual cost for the first year is \$28,275, which is equal to \$85 per acre for approximately 315 acres of irrigable farmland and \$1,500 for lease of the additional ½ share of WSSC associated with the Henry Farm. There will be a yearly increase in cost in accordance with the increase in CPI for each year of the lease term.

Recommended action: approval of the Farm Lease Agreement between the City of Greeley and Leland Lebsack.

8. Action: Approve Eheart Water Lease

This agreement is for 6 shares in the New Cache la Poudre Irrigating Company, 4 shares in the Cache la Poudre Reservoir Company, and 2 shares in the Windsor Reservoir and Canal Company. The proposed lease would expire December 31, 2028 with option to renew for one subsequent term of five years. Either party may terminate the lease on or before March 1 of each year. The annual cost of the lease is the cost of assessments due to the Companies plus a \$150 administrative fee. The Board approved a water lease agreement with Eheart in March 2015, which expired in December 2018.

Recommended action: approval of the Water Lease between the City of Greeley and Brooks Eheart.

9. Action: Approve Dyecrest Water Lease

This agreement is for 2 ½ shares in the Water Supply and Storage Company. The proposed lease would expire December 31, 2028 with option to renew for one subsequent term of five years. Either party may terminate the lease on or before March 1 of each year. The annual cost of the lease is the cost of assessments due to the Water Supply and Storage Company plus a \$150 administrative fee. These water rights were previously part of a farm lease agreement with Tim Kerbs of the Rodenberger farm. The Rodenberger farm was sold to Dyecrest Dairy in 2018, so this agreement would allow Dyecrest Dairy and Tim Kerbs (tenant farmer) to use the water rights on the Rodenberger farm.

Recommended action: approval of the Water Lease between the City of Greeley and Dyecrest Dairy.

10. Action: Approve Peppler Water Lease

This agreement is for 4 shares in the New Cache la Poudre Irrigating Company. The proposed lease would expire December 31, 2028 with option to renew for one subsequent term of five years. Either party may terminate the lease on or before March 1 of each year. The annual cost of the lease is the cost of assessments due to the New Cache la Poudre Irrigating Company plus a \$150 administrative fee. The Board approved a water lease agreement with Peppler in March 2015, which expired in December 2018.

Recommended action: approval of the Water Lease between the City of Greeley and Parry Peppler.

End of Consent Agenda

Vice Chairman made a motion, seconded by Mr. Ruyle, to approve the items on Consent Agenda and their respective recommended actions. The motion carried 5-0.

11. Pulled Consent Agenda Items

There were no items removed from the consent agenda.

12. Action: Approve Renewal of Glover Grazing Lease

Water Resources staff recommended approval of the Grazing Lease Agreement between the City of Greeley and Terry Glover. This agreement is for 136 acres on the former Tennyson property, including 126 acres of grazing land and 10 acres of cornfield. The City does not provide any water rights for irrigation of this property. The cost of the proposed lease begins at \$900 in the first year and will be adjusted annually in accordance with the Denver CPI. The proposed lease agreement expires in December 31, 2019, with automatic renewal for up to four subsequent terms of one year each. Either party may terminate the lease on or before March 1 of each year.

Vice Chairman Todd made motion, seconded by Mr. Sisneros, to approve the Glover Grazing lease. The motion carried 5-0.

13. Report: Instream Flow Augmentation Plan Update (Legislative Effort)

In accordance with the Phase I intergovernmental agreement (approved by the Board and City Council in February 2016) and Phase II Memorandum of Understanding (approved by Board and City Council in September 2018), Greeley has been working with a number of partners through the Poudre Runs Through It FLOWS subcommittee (i.e., Fort Collins, Northern Water, Thornton, Cache la Poudre Water Users Association, Colorado Water Trust, Colorado Water Conservation Board, and Colorado Parks and

Wildlife) to develop an augmentation plan to enhance instream flows in the Poudre River from the canyon mouth down to its confluence with the South Platte. The plan is intended to be a flexible tool by which parties can dedicate water at their discretion to augment flows in certain stretches of the river without adversely impacting other existing water rights. Water Resources staff made a presentation to update the Board on the status of the project regarding the pursuit of legislation.

14. Action: Adopt Resolution In Support of Water Smart Grant Application

Mr. Prior presented information regarding the Water and Sewer Department's application for a 2019 WaterSMART Water & Energy Efficiency Grant that could provide up to \$1.5M. These grants are awarded to larger projects that result in quantifiable and sustained water savings and support broader water reliability benefits. These projects conserve and use water more efficiently; mitigate conflict risk in areas at a high risk of future water conflict; and accomplish other benefits that contribute to water supply reliability in the western United States. Staff recommended that the Board adopt the enclosed resolution in support of this grant application.

Mr. Otis made motion, seconded by Mr. Sisneros, to approve and adopt the resolution in support of the Water Smart application. The motion carried 5-0.

15. Report: NISP Project Update

Mr. Jokerst presented an update regarding the Northern Integrated Supply Project ("NISP") which is a regional water supply project proposed by the Northern Colorado Water Conservancy District on behalf of 15 Northern Colorado municipalities and water providers. NISP requires multiple federal, state, and local permits and approvals before construction. Staff provided a presentation updating the Water & Sewer Board on NISP permitting status, with focus on NISP's recent application for Clean Water Action Section 401 Water Quality Certification ("401 Certification") from the Colorado Department of Public Health and Environment, Water Quality Control Division. The Water Quality Control Division invites public comments on the 401 Certification application, which are due April 5, 2019.

Erik Dial and Emily Carbone left the meeting at 2:47 p.m.

16. Executive Session

At 2:48 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. Conferences with an attorney for the purposes of receiving legal advice on specific legal questions under C.R.S. §24-6-402(4)(b) and Greeley Municipal Code 2.04.020(2).
3. 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 NISP 401 Draft Certification
2. Matters related to the Acquisition of Greeley Irrigation Company Shares from Peckham
3. Matters related to the acquisition of New Cache & Windsor Reservoir Shares from Western Equipment & Truck, Inc.

Vice Chairman Todd made motion, 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, Robert Ruyle, Manual Sisneros, Mayor John Gates, City Manager Roy Otto, Deputy Director Water Resources Adam Jokerst, Water Resources Manager Jennifer Petrzelka, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Environmental and Water Resources Attorney Aaron Goldman, Water and Sewer Board Counsel Jim Noble, Office Manager Shannon Metcalf and Senior Administrative Assistant Ettie Arnold, Consultants Mary Gearhart, Katie Fendel and Carolyn Nobel

Mary, Carolyn and Katie left the meeting at 3:33 p.m.

The Executive Session ended at 3:52 p.m. and the regular meeting resumed.

17. Action: Approve Acquisition of Greeley Irrigation Company Shares from Peckham

Staff recommended that the Water and Sewer Board approve the Purchase and Sale Agreement for Water Rights with Peckham Development Corporation ("Peckham"). The

Agreement contemplates Greeley's purchase of three (3) shares of stock in the Greeley Irrigation Company ("Subject Shares"). The total purchase price is \$254,256.00.

Greeley Irrigation Company ("GIC") shares are not typically treated for potable use by Greeley due to their location far downstream of the City's Bellvue Filter Plant. However, GIC water is useful for supply and operation of the City's non-potable system and gravel pit storage at the Poudre Ponds complex.

Peckham does not own the real property historically irrigated by the Subject Shares, but represents that it can convey dry-up sufficient to facilitate the approval of a future change of use by Greeley.

Vice Chairman Todd made motion, seconded by Mr. Sisneros, to approve the proposed Purchase and Sale Agreement for Water Rights with Peckham Development Corporation, and delegate authority to the Director of Water and Sewer or his designee (1) to make minor amendments to the Agreement, including but not limited to, amendments to property descriptions and extensions of contract deadlines, and (2) to take all necessary and appropriate steps in conducting due diligence and closing on the acquisition. The motion carried 5-0.

18. Action: Approve Acquisition of New Cache & Windsor Reservoir Shares from Western Equipment

Staff recommended that the Water and Sewer Board approve the Purchase and Sale Agreement for Water Rights with Western Equipment & Truck, Inc. ("Western Equipment"). The Agreement contemplates Greeley's purchase of (12) shares of stock in the New Cache la Poudre Irrigating Company, four (4) shares of stock in the Cache la Poudre Reservoir Company, and four (4) shares of stock in the Windsor Reservoir and Canal Company ("Subject Shares"). The total purchase price is \$1,650,000.00.

The Water and Sewer Board previously directed staff to purchase the Subject Shares during its August 16, 2017 meeting for \$1,800,000.00. Staff's due diligence investigations during the 2017 contract period identified certain issues that could not be resolved with the seller at that point, and Greeley terminated the contract on January 17, 2018.

Greeley and Western Equipment re-engaged on negotiations for the Subject Shares in early 2019, which resulted in the enclosed Purchase and Sale Agreement.

Vice Chairman Todd made motion, seconded by Mr. Ruyle, to approve the proposed Purchase and Sale Agreement for Water Rights, and delegate authority to the Director of Water and Sewer or his designee (1) to make minor amendments to the Agreement, including but not limited to, amendments to property descriptions and extensions of

contract deadlines, and (2) to take all necessary and appropriate steps in conducting due diligence and closing on the acquisition. The motion carried 5-0.

19. Legal Report

Mr. Noble recommended filing two statements of opposition.

- a. **19CW3016 – ACWWA, ECCV, United Water and Sanitation District, 70 Ranch, LLC:** Application for change of water rights for 7 shares in Lower Latham Ditch, and plan for augmentation for replacement of return flows. The changed shares will be used in the co-applicants' augmentation plans, exchanges, and recharge projects. The point of diversion for the Lower Latham Ditch is within one of Greeley's exchange reaches. Mr. Noble recommended that Greeley file a statement of opposition to ensure proper accounting and terms and conditions that will protect Greeley's exchange, and to protect against expansion of use that could result in rebound priority calls on the Cache la Poudre River.
- b. **19CW3019 – Fort Collins-Loveland Water District:** Application to quantify municipal return flows for use in augmentation plan and for use to meet return flow obligations. Applicant is seeking a judicial determination of the amount and timing of a portion of its municipal return flows attributable to the indoor use of its fully reusable water sources within its service area, so that it may use that water for augmentation and replacement of return flow obligations. Mr. Noble recommended that Greeley file a statement of opposition to ensure such municipal return flows are properly determined and tracked in time, location, and amount.

Vice Chairman Todd made motion, seconded by Mr. Ruyle to authorize the filing of statements of opposition in Case Nos. 19CW3016, and 19CW3019, and for staff and legal counsel to seek resolution of issues raised by the cases as consistent with Water and Sewer Board Resolution No. 3, 2015. The motion carried 5-0.

20. Director's Report

Mr. Jokerst gave a report on the following items:

- Water Rental Round Up
- Information from Sean Chambers already in the Board packet

21. Such Other Business That May be Brought Before the Board and Added to This Agenda by Motion of the Board

There were no additional items brought before the Board and added to the agenda.

Chairman Evans adjourned the meeting at 4: 04 p.m.

Harold Evans, Chairman

Ettie Arnold, Senior Administrative Assistant

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 4

TITLE: APPROVE HERTZKE WATER LEASE

RECOMMENDATION: APPROVE HERTZKE WATER LEASE AND
DELEGATE AUTHORITY TO STAFF

ADDITIONAL INFORMATION:

This agreement is for 30.08 shares in the Greeley-Loveland Irrigation Company, 10 shares in the Seven Lakes Reservoir Company and 11 rights in the Loveland and Greeley Reservoir Company. The proposed lease expires December 31, 2028 with option to renew for one subsequent term of five years. Either party may terminate the lease on or before March 1 of each year. The annual cost of the lease is the cost of assessments paid by Greeley to the ditch companies plus a \$150 administrative fee.

Recommended action for Consent Agenda: Water Resources staff recommends approval of the enclosed Irrigation Water Lease between the City of Greeley and Hertzke Holsteins, LTD, and also recommends that the Board delegate authority to staff to amend the agreement to revise the amount of water leased and the legal description of the property in the event that a portion of the irrigated property is developed during the lease term.

IRRIGATION WATER LEASE AGREEMENT

This IRRIGATION WATER LEASE AGREEMENT ("Agreement") is entered into this 12th day of April 2019, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation ("City") whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 and HERTZKE HOLSTEINS, LTD., a Colorado limited partnership, whose address is 427 Pelican Cove, Windsor, Colorado 80550 ("Lessee") (collectively "the Parties").

Recitals

WHEREAS, the Lessee is the owner and/or legal occupant of certain real property located in Greeley, Colorado consisting of approximately 470 acres of irrigable cropland, which property is shown on Exhibit A hereto and more particularly located in Weld County parcels 095702100059 and 095701201005, and in the W½ of the NE¼ and the W½ of the SE¼ of Section 1, Township 5 North, Range 67 West of the 6th P.M. in Weld County ("Property"); and

WHEREAS, the City owns those certain water rights represented by 30.08 shares in the Greeley-Loveland Irrigation Company (Certificate Nos. 3136, 3150, 3151, 3152, and 3247), 10 shares in the Seven Lakes Reservoir Company (Certificate Nos. 1312, 1326, and 1331), and 11 rights in the Loveland and Greeley Reservoir Company (Lake Loveland) (Certificate Nos. 804, 805, 836, 837, 838, 840, 841, 845, 846, 847, 852, 853, and 886) (collectively "the Water Rights"), which may be used to irrigate the Property; and

WHEREAS, the Lessee desires to lease the Water Rights from the City for agricultural irrigation on the Property and the City desires to lease the Water Rights to the Lessee for agricultural irrigation on the Property;

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

Agreement

1. **Water Rights Lease.** The City hereby leases to Lessee and Lessee hereby leases from the City the above-described Water Rights for the purpose of agricultural irrigation on the Property.

2. **Term of Lease.** The initial term of this Agreement begins on the date of mutual execution and ends on December 31, 2028. The Agreement expires at the end of this initial term, but may be renewed for one subsequent term of five years upon execution of a written mutual agreement of renewal by the Parties. Notwithstanding the foregoing, this Agreement may be terminated for any reason by the Lessee or the City prior to any irrigation season by delivering an advance written notice to the other party on or before March 1 of that calendar year.

3. **Annual Lease Amount and Administrative Fee.** The Lessee shall pay to the City an Annual Lease Amount equal to all assessments, charges, and other expenses due and attributable to the Water Rights paid by the City. Lessee shall also pay the City an Annual Administrative Fee in the amount of one hundred and fifty dollars (\$150.00) per year. The City will provide an invoice of the Annual Lease Amount and Annual Administrative Fee to the Lessee, and Lessee shall deliver payment of that total amount to the City no later than (i) May 15 of the

then current irrigation year, or (ii) within fifteen days of receipt of such invoice from the City. The Lessee shall also remit to the City an additional charge equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

4. **Use of Water Rights.** Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of the companies that issued the shares. Lessee shall comply with Chapter 14.08 of the Greeley Municipal Code, and all rules and regulations of the State of Colorado pertaining to use of the Water Rights. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as abandonment of the Water Rights. Lessee shall provide advance written notice to the City of at least thirty days if he no longer intends to irrigate the entirety of the Property with the Water Rights.

5. **Historical Use Investigation.** On or before December 31 of each calendar year, Lessee shall deliver to the City a completed Historical Use Affidavit and Questionnaire, in the form attached hereto as Exhibit B. Lessee acknowledges that the City may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Agreement. Lessee shall cooperate with the City and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from the City, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

6. **Restriction on Sublease and Assignment.** Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from the City. Lessee shall request consent from the City prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of the City.

7. **No Vested Interest in Shares or Joint Venture.** The City grants no interest in the Water Rights to the Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the Parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through its use of the Water Rights on the Property.

8. **No Guarantee of Yield.** This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. The City makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold the City liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

9. **Maintenance of Infrastructure.** Lessee shall maintain the lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at his own cost and expense. Lessee

shall make all repairs and restorations necessary to keep the lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

10. **Indemnification.** Lessee agrees to exercise its rights under this Agreement at its own risk. Lessee shall indemnify and hold harmless the City from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

11. **Notice.** All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the addresses set forth above. The Lessee shall provide written notice to the City if the appropriate contact information changes.

12. **Default and Termination.** If either the City or the Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 11 above.

(a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraph 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, the City may immediately terminate this Agreement by written notice to the Lessee.

(b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

13. **Cessation of Irrigation.** Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property.

14. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than the Lessee and the City, or their respective successors in interest.

15. **Recovery of Costs and Fees.** In addition to any remedies otherwise available, a party that prevails in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

16. **Governing Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

17. **Severability.** In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the Parties.

18. **Integration.** This Agreement constitutes a complete integration of the understanding and agreement between the City and Lessee with respect to the subject matter herein, and supersedes all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties, express or implied, exist between the City and Lessee except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by the City and Lessee.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile, .pdf, or other electronic means. The Parties agree to accept and be bound by signatures hereto delivered by facsimile, .pdf, or other electronic means.

20. **Recording.** Lessee shall not record this Agreement in the real property records of any jurisdiction.

IN WITNESS WHEREOF, the undersigned Parties have executed this Irrigation Water Lease Agreement on the date first set forth above.

CITY OF GREELEY

ATTEST:

By: _____
Mayor

By: _____
City Clerk

LESSEE

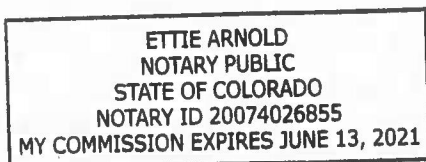
HERTZKE HOLSTEINS, LTD.

By: Rick Hertzke

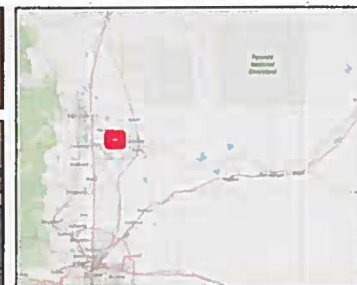
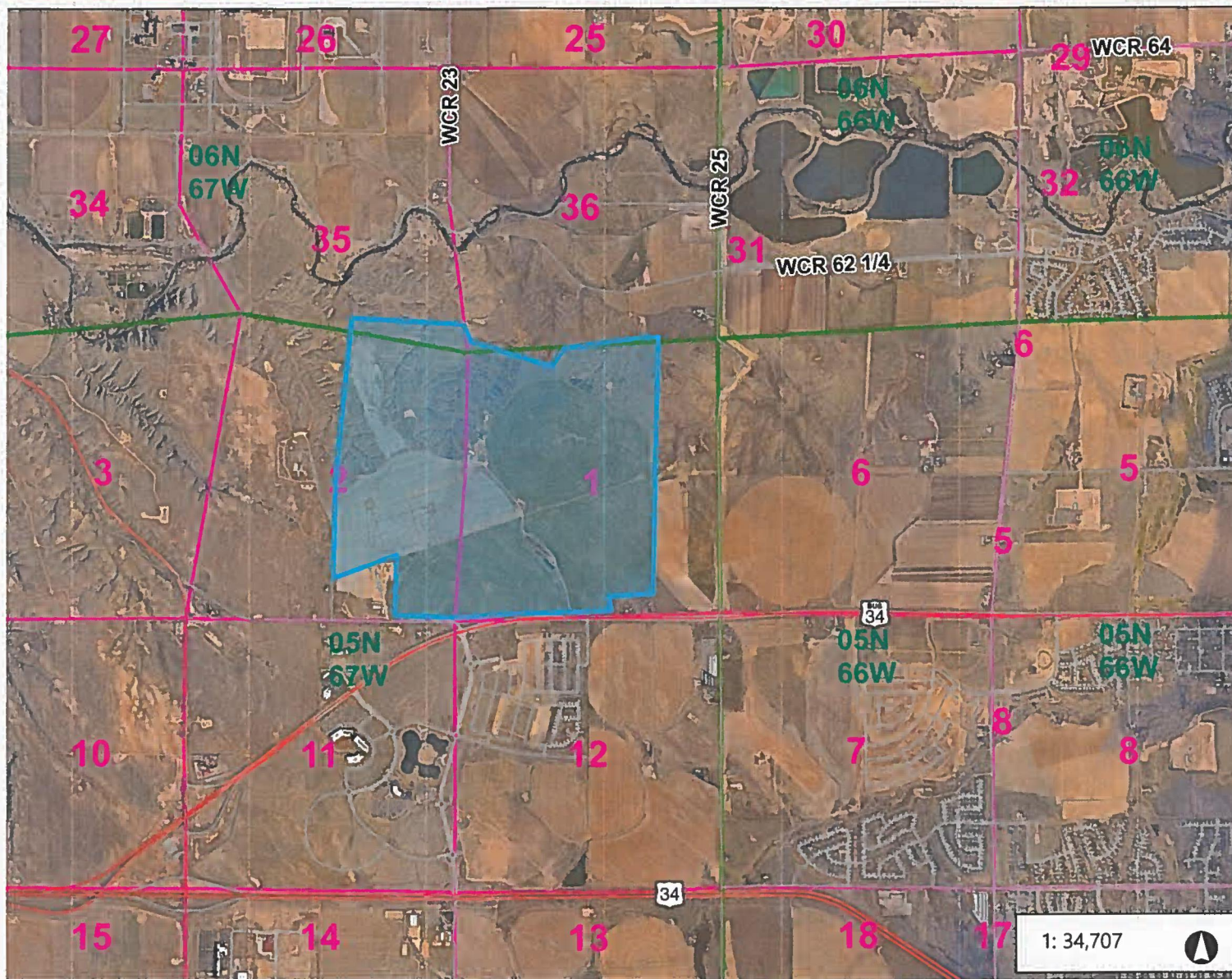
STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 12 day of April 2019 by Rick Hertzke, whose signature appears above on behalf of the Lessee.

Witness my hand and official seal.



Ettie Arnold
Notary Public
My commission expires: June 13, 2021



Legend

- Parcels
- Highway
- Road
- Highway
- Township / Range
- Section
- Quarter Section
- County Boundary

Notes

5,784.5 0 2,892.27 5,784.5 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
© Weld County Colorado

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

EXHIBIT B
AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

WATER RIGHTS:

Ditch or Reservoir Company: _____
Shares or Interest: _____

Name and address of owner and user of water rights:

Owner: _____
User(s): _____

Year water rights were used as described: _____

IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

_____.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights: _____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this _____ day of _____, 2016.

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me by _____, this _____ day of _____, 20__.

Witness my hand and Official Seal.

Notary Public
My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

The person completing this questionnaire need not necessarily be the Lessee, but must have personal knowledge of the information provided

1. Name of person completing this questionnaire: _____
Mailing Address: _____
Telephone: _____
Facsimile: _____
Email Address: _____
2. The information provided below pertains to _____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").
3. Did you use the Shares pursuant to a Lease Agreement? _____
Date of the Lease: _____
Name of Lessee (if different from Question 1): _____
Name of Lessor: _____
4. The information in this questionnaire relates to my use of the Shares during the 20__ irrigation season (hereinafter "Lease Year").
5. Do you still own the farm or parcel irrigated by these Shares? _____
6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company? _____
7. What is the legal description of the farm or parcel on which these Shares were used? _____
8. What is the total size of the farm or parcel? _____ acres.
9. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.
10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.
11. Please provide the following information regarding how the water from these Shares is delivered.
 - Location and ID Number of the head gate at the main ditch: _____.
 - Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____.
 - Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
 - Approximate location of pumps, if used: _____.

- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.

12. How was water applied during the Lease Year? Sprinkler _____ Furrow _____ Flood _____
Other/Combination (Describe): _____.

13. What was the irrigation season for the Lease Year? Start Date: _____ Stop Date: _____

14. During the Lease Year, did you divert and irrigate with all water available under the Shares? ____.
If no, please explain the reason why all water was not taken, approximately how much was not taken, and
for _____ how _____ long: _____

_____.

15. Other than the Shares leased, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Lease Year? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____
- _____
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____
- _____
- Any other water used: _____
- Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____
- _____

16. During the Lease Year, what crops were grown on the land irrigated by the Shares?

i. Crop: _____	Percentage: _____	Location: _____
ii. Crop: _____	Percentage: _____	Location: _____
iii. Crop: _____	Percentage: _____	Location: _____
iv. Crop: _____	Percentage: _____	Location: _____
v. Crop: _____	Percentage: _____	Location: _____
vi. Crop: _____	Percentage: _____	Location: _____

17. Were the lands on which the Shares were used subirrigated? _____

18. If possible, please provide a map, sketch, or aerial photograph showing locations of (check if included):

- _____ Farm or Parcel
- _____ Areas irrigated by the Shares during the Lease Year
- _____ Areas irrigated with other water
- _____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____

Date: _____

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 5

TITLE: APPROVE BERNHARDT WATER LEASE

RECOMMENDATION: APPROVE BERNHARDT WATER LEASE

ADDITIONAL INFORMATION:

This agreement is for 7.5 shares in the Seven Lakes Reservoir Company and 6 rights in the Loveland and Greeley Reservoir Company. The proposed lease expires December 31, 2028 with option to renew for one subsequent term of five years. Either party may terminate the lease on or before March 1 of each year. The annual cost of the lease is the cost of assessments paid by Greeley to the ditch companies plus a \$150 administrative fee.

Recommended action for Consent Agenda: Water Resources staff recommends approval of the enclosed Irrigation Water Lease between the City of Greeley and Bernhardt Ag, LLC.

IRRIGATION WATER LEASE AGREEMENT

This IRRIGATION WATER LEASE AGREEMENT ("Agreement") is entered into this 12th day of April 2019, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation ("City") whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 and BERNHARDT AG, LLC, a Colorado limited company, whose address is 12281 State Hwy 60, Milliken, CO 80543 ("Lessee") (collectively "the Parties").

Recitals

WHEREAS, the Lessee is the owner and/or legal occupant of certain real property located in Weld County, Colorado, which property consists of approximately 680 acres and is more particularly described on Exhibit A attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, the City owns those certain water rights represented by 7.5 shares in the Seven Lakes Reservoir Company (Certificate No. 1193) and 6 rights in the Loveland and Greeley Reservoir Company (Lake Loveland) (Certificate Nos. 524, 525, and 531) (collectively "the Water Rights"), which may be used to irrigate the Property; and

WHEREAS, the Lessee desires to lease the Water Rights from the City for agricultural irrigation on the Property and the City desires to lease the Water Rights to the Lessee for agricultural irrigation on the Property;

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

Agreement

1. **Water Rights Lease.** The City hereby leases to Lessee and Lessee hereby leases from the City the above-described Water Rights for the purpose of agricultural irrigation on the Property.

2. **Term of Lease.** The initial term of this Agreement begins on the date of mutual execution and ends on December 31, 2028. The Agreement expires at the end of this initial term, but may be renewed for one subsequent term of five years upon execution of a written mutual agreement of renewal by the Parties. Notwithstanding the foregoing, this Agreement may be terminated for any reason by the Lessee or the City prior to any irrigation season by delivering an advance written notice to the other party on or before March 1 of that calendar year.

3. **Annual Lease Amount and Administrative Fee.** The Lessee shall pay to the City an Annual Lease Amount equal to all assessments, charges, and other expenses due and attributable to the Water Rights paid by the City. Lessee shall also pay the City an Annual Administrative Fee in the amount of one hundred and fifty dollars (\$150.00) per year. The City will provide an invoice of the Annual Lease Amount and Annual Administrative Fee to the Lessee, and Lessee shall deliver payment of that total amount to the City no later than (i) May 15 of the then current irrigation year, or (ii) within fifteen days of receipt of such invoice from the City. The Lessee shall also remit to the City an additional charge equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

4. **Use of Water Rights.** Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of the companies that issued the shares. Lessee shall comply with Chapter 14.08 of the Greeley Municipal Code, and all rules and regulations of the State of Colorado pertaining to use of the Water Rights. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as abandonment of the Water Rights. Lessee shall provide advance written notice to the City of at least thirty days if he no longer intends to irrigate the entirety of the Property with the Water Rights.

5. **Historical Use Investigation.** On or before December 31 of each calendar year, Lessee shall deliver to the City a completed Historical Use Affidavit and Questionnaire, in the form attached hereto as Exhibit B. Lessee acknowledges that the City may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Agreement. Lessee shall cooperate with the City and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from the City, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

6. **Restriction on Sublease and Assignment.** Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from the City. Lessee shall request consent from the City prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of the City.

7. **No Vested Interest in Shares or Joint Venture.** The City grants no interest in the Water Rights to the Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the Parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through its use of the Water Rights on the Property.

8. **No Guarantee of Yield.** This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. The City makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold the City liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

9. **Maintenance of Infrastructure.** Lessee shall maintain the lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at his own cost and expense. Lessee shall make all repairs and restorations necessary to keep the lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

10. **Indemnification.** Lessee agrees to exercise its rights under this Agreement at its own risk. Lessee shall indemnify and hold harmless the City from and against any cost, expense, or liability arising out of this Agreement

or related activities. Nothing in this Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

11. **Notice.** All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the addresses set forth above. The Lessee shall provide written notice to the City if the appropriate contact information changes.

12. **Default and Termination.** If either the City or the Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 11 above.

(a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraph 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, the City may immediately terminate this Agreement by written notice to the Lessee.

(b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

13. **Cessation of Irrigation.** Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property.

14. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than the Lessee and the City, or their respective successors in interest.

15. **Recovery of Costs and Fees.** In addition to any remedies otherwise available, a party that prevails in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

16. **Governing Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

17. **Severability.** In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the Parties.

18. **Integration.** This Agreement constitutes a complete integration of the understanding and agreement between the City and Lessee with respect to the subject matter herein, and supersedes all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties, express or implied, exist between the

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile, .pdf, or other electronic means. The Parties agree to accept and be bound by signatures hereto delivered by facsimile, .pdf, or other electronic means.

IN WITNESS WHEREOF, the undersigned Parties have executed this Irrigation Water Lease Agreement on the date first set forth above.

By: _____
City Clerk

By 1 [Signature]

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 12 day of April 2019 by David Bernhardt, whose signature appears above on behalf of the Lessee.

ETTIE ARNOLD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20074026855
MY COMMISSION EXPIRES JUNE 13, 2021

Steph Arnold
Notary Public
My commission expires: June 13, 2021

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

The Property is legally described as follows:

The W $\frac{1}{2}$ of the NW $\frac{1}{4}$, the W $\frac{1}{2}$ of the SW $\frac{1}{4}$, the NE $\frac{1}{4}$ and SE $\frac{1}{4}$, all in Section 36, Township 5 North, Range 67 West of the 6th P.M. in Weld County, Colorado, specifically Weld County parcels 095736000032 and 095736400039.

The NW $\frac{1}{4}$ of Section 31, Township 5 North, Range 66 West of the 6th P.M. in Weld County, Colorado, specifically Weld County parcel 095931200004; and

The SW $\frac{1}{4}$ of Section 31, Township 5 North, Range 66 West of the 6th P.M. in Weld County, Colorado; and

The NW $\frac{1}{4}$ of Section 6, Township 4 North, Range 66 West of the 6th P.M. in Weld County, Colorado; and

The N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 6, Township 4 North, Range 66 West of the 6th P.M. in Weld County, Colorado, specifically Weld County parcel 105706000004; and

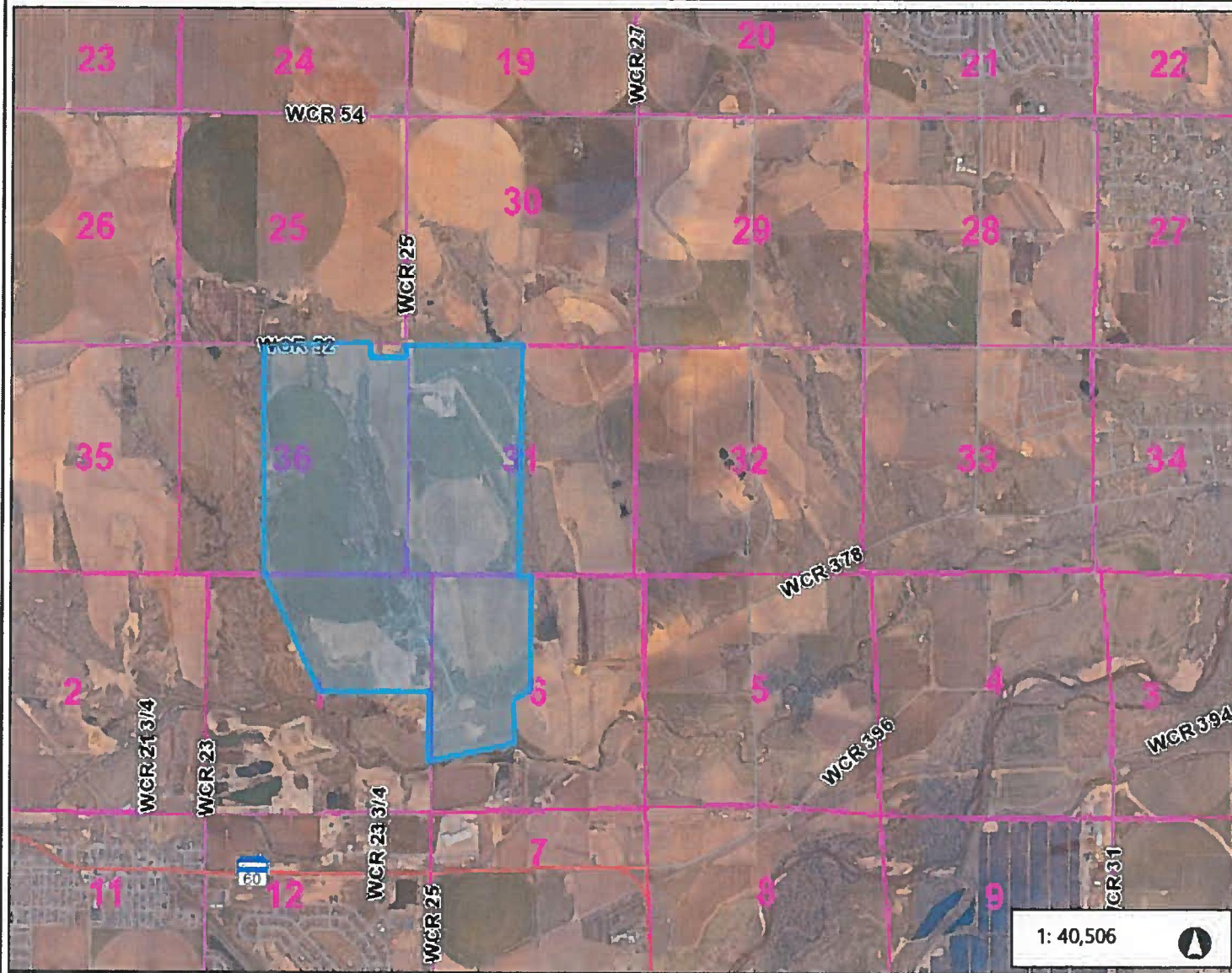
The N $\frac{1}{2}$ of Section 1, Township 4 North, Range 67 West of the 6th P.M. in Weld County, Colorado, specifically Weld County parcel 105901100003;

collectively totaling approximately 680 acres, more or less.



WELD COUNTY
ONLINE MAPPING

Exhibit A - Bernhardt



Legend

- Highway
- Road
- Road
- Highway
- Section
- County Boundary

Notes

6,751.1 0 3,375.54 6,751.1 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
© Weld County Colorado

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

EXHIBIT B
AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

WATER RIGHTS:

Ditch or Reservoir Company: _____
Shares or Interest: _____

Name and address of owner and user of water rights:

Owner: _____
User(s): _____

Year water rights were used as described: _____

IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights:

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this ____ day of _____, 20__.

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me by _____,
this ____ day of _____, 20__.

Witness my hand and Official Seal.

Notary Public
My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

The person completing this questionnaire need not necessarily be the Lessee, but must have personal knowledge of the information provided

1. Name of person completing this questionnaire: _____
Mailing Address: _____
Telephone: _____
Facsimile: _____
Email Address: _____
2. The information provided below pertains to _____ shares of the _____ Company, represented by Certificate No. _____ (hereinafter "Shares").
3. Did you use the Shares pursuant to a Lease Agreement? _____
Date of the Lease: _____
Name of Lessee (if different from Question 1): _____
Name of Lessor: _____
4. The information in this questionnaire relates to my use of the Shares during the 20__ irrigation season (hereinafter "Lease Year").
5. Do you still own the farm or parcel irrigated by these Shares? _____
6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company? _____
7. What is the legal description of the farm or parcel on which these Shares were used? _____
8. What is the total size of the farm or parcel? _____ acres.
9. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.
10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.
11. Please provide the following information regarding how the water from these Shares is delivered.
 - Location and ID Number of the head gate at the main ditch: _____
 - Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____
 - Identification of any carrier or lateral ditch stock required to deliver these rights: _____
 - Approximate location of pumps, if used: _____

- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____

12. How was water applied during the Lease Year? Sprinkler _____ Furrow _____ Flood _____
Other/Combination (Describe): _____

13. What was the irrigation season for the Lease Year? Start Date: _____ Stop Date: _____

14. During the Lease Year, did you divert and irrigate with all water available under the Shares? _____.
If no, please explain the reason why all water was not taken, approximately how much was not taken, and
for _____ how _____ long: _____

15. Other than the Shares leased, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Lease Year? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____
- _____
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____
- _____
- Any other water used: _____
- Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____
- _____

16. During the Lease Year, what crops were grown on the land irrigated by the Shares?

i. Crop: _____	Percentage: _____	Location: _____
ii. Crop: _____	Percentage: _____	Location: _____
iii. Crop: _____	Percentage: _____	Location: _____
iv. Crop: _____	Percentage: _____	Location: _____
v. Crop: _____	Percentage: _____	Location: _____
vi. Crop: _____	Percentage: _____	Location: _____

17. Were the lands on which the Shares were used subirrigated? _____

18. If possible, please provide a map, sketch, or aerial photograph showing locations of (*check if included*):

- _____ Farm or Parcel
- _____ Areas irrigated by the Shares during the Lease Year
- _____ Areas irrigated with other water
- _____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____

Date: _____

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE _____

ITEM NUMBER: 7

TITLE: APPROVE SHEEP DRAW WATER LEASE

RECOMMENDATION: APPROVE SHEEP DRAW WATER LEASE

ADDITIONAL INFORMATION:

Water Resources staff recommends approval of the enclosed Water Lease between the City of Greeley, Sheep Draw Farms and Wiedeman Farms & Ranch, LLC. This agreement is for 14 shares in the Greeley and Loveland Irrigation Company and 2.5 rights in the Loveland and Greeley Reservoir Company. The proposed lease expires December 31, 2028 with option to renew for one subsequent term of five years. The annual cost of the lease is 105 percent of all assessments, charges and other expenses attributable to the Water Rights paid by the City. This lease is associated with a raw water agreement with Sheep Draw Farms, LLC, executed December 2008.

Recommended action: Water Resources staff recommends approval of the enclosed Irrigation Water Lease between the City of Greeley, Sheep Draw Farms, LLC, and Wiedeman Farms & Ranch, LLC.

IRRIGATION WATER LEASE AGREEMENT
(Sheep Draw Farms, LLC)

This IRRIGATION WATER LEASE AGREEMENT (“Agreement”) is entered into this ____ day of _____ 2019, by and between the CITY OF GREELEY, a municipal corporation of the State of Colorado, (“City”), whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 and SHEEP DRAW FARMS, LLC, a Colorado limited liability company whose address is 1801 16th Street, Greeley, Colorado 80631 (“Lessee”) and WIEDEMAN FARMS & RANCH, LLC, a Colorado limited liability company whose address is 7611 W. 4th Street, Greeley, Colorado 80631 (“Wiedeman”) (collectively “the Parties”).

Recitals

WHEREAS, the City owns those certain water rights represented by 14 shares in the Greeley and Loveland Irrigation Company, as evidenced by Certificate No. 3281; and 2.5 rights in the Loveland and Greeley Reservoir Company, as evidenced by Certificate Nos. 933, 934, and 935 (collectively “the Water Rights”); and

WHEREAS, the Lessee and Wiedeman desire a long-term lease of the Water Rights from the City for agricultural irrigation on the property owned by Lessee and more particularly described on Exhibit A, attached hereto and incorporated herein (“Property”), and the City desires to lease the Water Rights to the Lessee and Wiedeman for such agricultural irrigation on the Property; and

WHEREAS, the City and the Lessee executed that certain Raw Water Agreement, dated December 9, 2008, which is recorded in the Weld County real property records at Reception No. 3600151; and

WHEREAS, the Lessee has been leasing the Water Rights from the City on an annual basis pursuant to Section 6 of the Raw Water Agreement (Temporary Lease of Greeley-Loveland System Water Rights for Agricultural Irrigation of Property); and

WHEREAS, the City and Lessee now desire to mutually rescind Section 6 of the Raw Water Agreement (Temporary Lease of Greeley-Loveland System Water Rights for Agricultural Irrigation of Property) and execute a replacement lease of the Water Rights in accordance with the terms and conditions provided herein; and

WHEREAS, Wiedeman has leased the Property from Lessee pursuant to a farm lease and will continue to lease the property from Lessee until the City is notified of the termination of such farm lease; and

WHEREAS, Wiedeman is willing to comply with the terms and conditions of this Agreement while leasing the Property from Lessee and using the Water Rights for irrigation thereon;

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

Agreement

1. **Rescission of Section 6 of the Raw Water Agreement.** In consideration of the covenants exchanged herein, the City and the Lessee hereby mutually rescind Section 6 the Raw Water Agreement (Temporary Lease of Greeley-Loveland System Water Rights for Agricultural Irrigation of Property) in its entirety. Upon execution of this Agreement by the Parties, the temporary lease described in Section 6 of the Raw Water Agreement is of no further legal effect and the benefits and burdens described in that section are terminated. The City and Lessee acknowledge that all other provisions of the Raw Water Agreement, aside from Section 6, remain in full force and effect.

2. **Water Rights Lease.** The City hereby leases to Lessee and Wiedeman the above-described Water Rights for the purpose of agricultural irrigation on the Property.

3. **Term of Lease.** The initial term of this Agreement begins on the date of mutual execution by the Parties and ends on December 31, 2028. The Agreement expires at the end of this initial term, but may be renewed for one subsequent term of five years upon execution of a written mutual agreement of renewal by the Parties.

4. **Annual Lease Amount.** The Lessee shall pay to the City an Annual Lease Amount equal to 105 percent of all assessments, charges, and other expenses due and attributable to the Water Rights paid by the City. The City will provide notice of the Annual Lease Amount to the Lessee, and Lessee shall deliver full payment of that amount to the City no later than May 15 of the then current irrigation year. The Lessee shall also remit to the City an additional charge equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

5. **Use of Water Rights.** Lessee and Wiedeman shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee and Wiedeman shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee and Wiedeman shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of the company that issued the shares. Lessee and Wiedeman shall comply with Chapter 14.08 of the Greeley Municipal Code, and all rules and regulations of the State of Colorado pertaining to use of the Water Rights. Lessee and Wiedeman shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as abandonment of the Water Rights. Lessee and/or Wiedeman shall provide advance written notice to the City of at least thirty days if the parties no longer intend to irrigate the entirety of the Property with the Water Rights.

6. **Historical Use Investigation.** On or before May 15 of each calendar year, Lessee and Wiedeman shall deliver to the City a completed Historical Use Affidavit and Questionnaire, in the form attached hereto as Exhibit B. Lessee and Wiedeman acknowledge that the City may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Agreement. Lessee and Wiedeman shall cooperate with the City and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from the City, Lessee and Wiedeman shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

7. **Restriction on Sublease and Assignment.** Lessee and Wiedeman shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee and Wiedeman shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from the City. Lessee and Wiedeman shall request consent from the City prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of the City.

8. **No Vested Interest in Shares or Joint Venture.** The City grants no interest in the Water Rights to the Lessee or Wiedeman other than as explicitly set forth in this Agreement. Lessee and Wiedeman shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind among the Parties, and the Lessee and Wiedeman shall bear the entirety of any loss, cost, or expense incurred through their use of the Water Rights on the Property.

9. **No Guarantee of Yield.** Lessee and Wiedeman are entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. The City makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee and Wiedeman shall not hold the City liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

10. **Maintenance of Infrastructure.** Lessee and Wiedeman shall maintain the lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at their own cost and expense. Lessee and Wiedeman shall make all repairs and restorations necessary to keep the lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

11. **Indemnification.** Lessee and Wiedeman agree to exercise their rights under this Agreement at their own risk. Lessee and Wiedeman shall indemnify and hold harmless the City from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

12. **Notice.** All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the addresses set forth above. The Lessee and Wiedeman shall provide written notice to the City if the appropriate contact information changes.

13. **Default and Termination.** If any of the Parties fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 12 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure

period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 12 above.

- (a) Notwithstanding the above, failure by the Lessee and/or Wiedeman to comply with the terms and conditions of Paragraph 5 or Paragraph 7 of this Agreement constitutes a material breach. In the event that the Lessee and/or Wiedeman commits a material breach, the City may immediately terminate this Agreement by written notice to the Lessee and Wiedeman.
- (b) This Agreement may otherwise be terminated for any reason by the Lessee or the City prior to any irrigation season by delivering an advance written notice to the other party on or before February 1 of that calendar year.

The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

14. Cessation of Irrigation. Upon expiration or termination of this Agreement, Lessee and Wiedeman shall immediately cease agricultural irrigation of the Property with the Water Rights.

15. Binding on Successors in Interest. This Agreement inures to the benefit of, and is binding upon, the heirs, personal representatives, successors and assigns of the Parties, subject to Paragraph 7 above. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than the Lessee, Wiedeman, and the City, or their respective successors in interest.

16. Recovery of Costs and Fees. In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

17. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

18. Severability. In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the Parties.

19. Integration. This Agreement constitutes a complete integration of the understanding and agreement between the City, Lessee, and Wiedeman with respect to the subject matter herein, and supersedes all other lease agreements regarding the Water Rights, including, but not limited to, the 2016 Lease. No representations, negotiations, or warranties, express or implied, exist between the City, Lessee, and Wiedeman except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by the City, Lessee, and Wiedeman.

IN WITNESS WHEREOF, the undersigned parties have executed this Irrigation Water Lease Agreement on the date first set forth above.

CITY OF GREELEY

ATTEST:

By: _____
Mayor

By: _____
City Clerk

SHEEP DRAW FARMS, LLC

WIEDEMAN FARMS & RANCH, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2019 by _____, as an authorized representative of SHEEP DRAW FARMS, LLC, whose signature appears above.

Witness my hand and official seal.

Notary Public
My commission expires: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2019 by _____, as an authorized representative of WIEDEMAN FARMS & RANCH, LLC, whose signature appears above.

Witness my hand and official seal.

Notary Public
My commission expires: _____

Exhibit A

Parcel 1:

A tract of land located in the West Half of the Northeast Quarter (W ½ NE ¼) of Section 12, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado, described as follows:

Beginning at the NE Corner of said W ½ of the NE ¼; Thence South 240 feet; Thence West 147 feet; Thence North 240 feet; Thence East 147 feet to the point of beginning.

EXCEPTING THEREFROM that parcel conveyed to the Department of Highways, State of Colorado, by Deed recorded May 9, 1962 in Book 1614 at Page 153, which is more particularly described as follows:

Beginning at a point on the West property line from which the NW Corner of the NE ¼ of said Section 12 bears North 88°43'30" West, 1136.6 feet; Thence along said West property line, North 00°45' West, 61.2 feet to the North line of Section 12; Thence along the North line of Section 12, North 88°11'30" East, 147.00 feet to the NE Corner of the NW ¼ of the NE ¼ of said Section 12;

Thence along the East line of the NW ¼ of the NE ¼, South 00°45' East, 61.1 feet; Thence South 88°10' West, 147.00 feet, more or less, to the point of beginning,

County of Weld, State of Colorado.

Parcel 2:

A parcel of land being a part of the E1/2 of Section 12, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado and being more particularly described as follows:

Beginning at the SE Corner of said Section 12 and assuming the East Quarter Corner of said Section 12 to bear North 00°43'49" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2683.38 feet with all other bearings contained herein relative thereto. From said East Quarter Corner the NE Corner of said Section 12 bears North 00°43'37" West a distance of 2683.03 feet;

Thence North 00°43'49" West along the East line of said SE1/4 a distance of 155.00 feet to the NE Corner of that parcel of land as described in that Rule and Order as recorded September 16, 1968 in Book 599 as Reception No. 1521141 of the records of the WCCR. Said point being the TRUE POINT OF BEGINNING.

Thence along the Northerly line of the aforesaid parcel of land by the following Three (3) courses and distances:

Thence South 88°00'11" West a distance of 30.00 feet to the Westerly Right-Of-Way (ROW) line of Ninety-fifth Avenue (95th Ave) (also known as Weld County Road #25 (WCR#25))

Thence South 20°53'41" West a distance of 134.62 feet;

Thence South 88°41'20" West a distance of 2518.27 feet to the West line of the aforesaid SE 1/4;

Thence North 00°33'55" West along said West line a distance of 2627.76 feet to the Center Quarter Corner of said Section 12;

Thence continuing North 00°33'55" West along the West line of West Half of the NE Quarter (W1/2 NE1/4) a distance of 2595.89 feet Southwest Corner of that parcel of land as described in that Special Warranty Deed as recorded January 14, 1953 in Book 1635 on Page 385 as Reception No. 1398521 of the records of WCCR;

Thence North 87°31'44" East along the South line of said parcel of land a distance of 1145.02 feet to the SE Corner of the aforesaid parcel of land. Said point being the intersection with the West line of that parcel of land as described in that Personal Representative Deed as recorded September 14, 2000 as Reception No. 2793960 of the records of the WCCR;

Thence along a portion of the Westerly line and the Southerly line of the aforesaid parcel of land by the following Two (2) courses and distances:

Thence South 00°38'47" East a distance of 178.84 feet;

Thence North 87°33'03" East a distance of 119.06 feet to a point approximately One foot (1') Easterly of an existing fence line;

Thence along a line approximately 1' Easterly of an existing fence line by the following Three (3) courses and distances:

Thence South 01°09'43" East a distance of 1993.61 feet; Thence South 02°22'02" East a distance of 61.87 feet;

Thence South 00°37'52" East a distance of 702.43 feet to a point approximately One foot (1') Northerly of an existing fence line;

Thence South 41°10'36" East along a line approximately 1' Northerly of an existing fence line 12.80 feet to the intersection with the West line of the NE1/4 of the SE1/4 of said Section 12, also being the West line of Lot A of Recorded Exemption No. 0957-12-1-RE 3076 as recorded September 26, 2001 as Reception No. 2886582 of the records of the WCCR;

Thence South 00°38'45" East along the West line of said NE1/4 SE1/4, also being the West line of said Lot A a distance of 37.38 feet to the SW Corner of said Lot A;

Thence along the South line of said Lot A by the following Ten (10) courses and distances:

Thence South 39°59'43" East a distance of 174.32 feet;

Thence South 55°43'43" East a distance of 155.00 feet;

Thence North 57°46'17" East a distance of 58.00 feet;

Thence North 12°46'17" East a distance of 104.00 feet;

Thence North 41°31'17" East a distance of 96.00 feet;

Thence South 81°18'43" East a distance of 157.00 feet;

Thence South 72°28'43" East a distance of 136.50 feet;

Thence South 63°23'43" East a distance of 497.00 feet;

Thence South 70°13'43" East a distance of 146.00 feet;

Thence South 87°08'43" East a distance of 57.45 feet to the East line of the aforesaid SE1/4, also being the SE Corner of the aforesaid Lot A; Thence South 00°43'49" East along the East line of said SE1/4 a distance of 1754.07 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM

Any portion of the above described property which may be located within the parcel deeded by Bargain and Sale Deed to Tri-Pointe Residential Metropolitan District recorded May 30, 2001 at Reception No. 2852413,

AND ALSO EXCEPTING THEREFROM

Any portion of the above described property which may be located within the parcel deeded by Quit Claim Deed to Douglas L. DeTienne and Dawn R. DeTienne recorded February 3, 2005 at Reception No. 3258686.

County of Weld, State of Colorado

Parcel 3:

A parcel of land being part of Lot A of Recorded Exemption No. 0957-12-1-RE3076 as recorded September 26, 2001 at Reception No. 2886582 of the records of the Weld County Clerk and Recorder (WCCR) and being part of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twelve (12), Township Five North (T.5N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado, and being more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 12 and assuming the East line of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 12 as bearing North 00°43'49" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2683.38 feet with all other bearings contained herein relative thereto:

Thence North 00°43'49" West along said East line a distance of 1909.07 feet to the Southeast Corner of said Lot A. Said point being the **TRUE POINT OF BEGINNING**:

Thence along the South line of said Lot A by the following Ten (10) courses and distances:

Thence North 87°08'43" West a distance of 57.45 feet;
Thence North 70°13'43" West a distance of 146.00 feet;
Thence North 63°23'43" West a distance of 497.00 feet;
Thence North 72°28'43" West a distance of 136.50 feet;
Thence North 81°18'43" West a distance of 157.00 feet;
Thence South 41°31'17" West a distance of 96.00 feet;
Thence South 12°46'17" West a distance of 104.00 feet;
Thence South 57°46'17" West a distance of 58.00 feet;
Thence North 55°43'43" West a distance of 155.00 feet;
Thence North 39°58'43" West a distance of 174.32 feet to the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$, also being the West line of said Lot A a distance of 37.38 feet to a point approximately One foot (1') Northerly of an existing fence line;

Thence along a line approximately 1' Northerly of an existing fence line, and its Easterly extension by the following Nine (9) courses and distances:

Thence South 41°10'36" East a distance of 200.17 feet;
Thence South 54°51'27" East a distance of 90.58 feet;
Thence North 88°36'30" East a distance of 60.38 feet;
Thence North 22°58'01" East a distance of 165.95 feet;
Thence North 62°24'20" East a distance of 71.81 feet;
Thence South 81°29'20" East a distance of 198.55 feet;
Thence South 65°00'00" East a distance of 250.71 feet;
Thence South 63°34'15" East a distance of 315.54 feet;
Thence South 69°08'41" East a distance of 313.61 feet to the intersection with the East line of said SE $\frac{1}{4}$;
Thence South 00°43'49" East along said East line a distance of 26.53 feet to the **TRUE POINT OF BEGINNING**,
County of Weld, State of Colorado

AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

WATER RIGHTS:

Ditch or Reservoir Company: Greeley and Loveland Irrigation Company

Shares or Interest: 14 Shares

Name and address of owner and user of water rights:

Owner: City of Greeley
Water and Sewer Department
1100 10th Street, Suite 300
Greeley, Colorado 80631

User(s): Tenant: Alan Wiedeman
Sheep Draw Farms LLC
1801 16th Street
Greeley, CO 80631

Year water rights were used as described: _____

IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the water rights: _____.

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this _____ day of _____, 20__.

User's Name (printed)

User's Signature

[illegible]

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me by _____, this ____ day of _____, 20__.

Witness my hand and Official Seal.

Notary Public

My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

*The person completing this questionnaire need not necessarily be the Lessee,
but must have personal knowledge of the information provided*

1. Name of person completing this questionnaire: _____
Mailing Address: _____
Telephone: _____
Facsimile: _____
Email Address: _____
2. The information provided below pertains to 14 shares of the Greeley and Loveland Irrigation Company, represented by Certificate No. 3281 (hereinafter "Shares").
3. Did you use the Shares pursuant to a Lease Agreement? _____
Date of the Lease: _____
Name of Lessee (if different from Question 1): _____
Name of Lessor: _____
4. The information in this questionnaire relates to my use of the Shares during the 2016 irrigation season (hereinafter "Lease Year").
5. Do you still own the farm or parcel irrigated by these Shares? _____
6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company? _____
7. What is the legal description of the farm or parcel on which these Shares were used?
8. What is the total size of the farm or parcel? _____ acres.
9. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.
10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? _____ acres.
11. Please provide the following information regarding how the Shares water is delivered.
 - Location and ID Number of the head gate at the main ditch: _____.
 - Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____.
 - Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
 - Approximate location of pumps, if used: _____.

- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used:
_____.
12. How was water applied during the Lease Year? Sprinkler _____ Furrow _____ Flood _____
Other/Combination (Describe): _____.
13. What was the irrigation season for the Lease Year? Start Date: _____ Stop Date: _____
14. During the Lease Year, did you divert and irrigate with all water available under the Shares? _____.
If no, please explain the reason why all water was not taken, approximately how much was not taken, and
for how long: _____

_____.
15. Other than the Shares leased, was any other water (including other shares that are in the same Company
as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the
Shares are/were used during the Lease Year? If so, please provide the following information.
- Number of shares: 2.5 _____
- Ditch Company: Loveland and Greeley Reservoir Company _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____
_____.
- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____
_____.
- Any other water used: _____
- Describe how the water has been used, including the estimated percentage of the total irrigation supply
provided by such water: _____
_____.
16. During the Lease Year, what crops were grown on the land irrigated by the Shares?
- | | | |
|----------------|-------------------|-----------------|
| 1. Crop: _____ | Percentage: _____ | Location: _____ |
| 2. Crop: _____ | Percentage: _____ | Location: _____ |
| 3. Crop: _____ | Percentage: _____ | Location: _____ |
| 4. Crop: _____ | Percentage: _____ | Location: _____ |
| 5. Crop: _____ | Percentage: _____ | Location: _____ |
| 6. Crop: _____ | Percentage: _____ | Location: _____ |
17. Were the lands on which the Shares were used subirrigated? Yes _____ No _____
18. If possible, please provide a map, sketch, or aerial photograph showing locations of (*check if included*):

- _____ Farm or Parcel
- _____ Areas irrigated by the Shares during the Lease Year
- _____ Areas irrigated with other water
- _____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: _____

Date: _____

RAW WATER AGREEMENT

THIS RAW WATER AGREEMENT, dated this 9th day of December 2008, is entered into by and between the City of Greeley, a Colorado Municipal Corporation, the City of Greeley Water and Sewer Board (such City and Board collectively referred to herein as "City"), and Sheep Draw Farms LLC, a Colorado limited liability company ("Sheep Draw Farms").

RECITALS

- A. Sheep Draw Farms owns approximately 212 acres in Section 12, Township 5 North, Range 67 West, 6th P.M., in unincorporated Weld County, Colorado as more specifically described in the attached Exhibit A (the "Property").
- B. Sheep Draw Farms desires to receive water service for the Property from the City and to establish credits for certain water rights used on the Property towards satisfaction of the City's raw water transfer requirements.
- C. On July 5, 1963, Gertrude A. Fillinger entered into a Greeley-Loveland Shareholder's Domestic Water Agreement with the City (the "Shareholder's Agreement"), which addressed, inter alia, City water service to property owned by Ms. Fillinger, and provided for domestic water taps to be issued by the City on her property located in Section 7, Township 5 North, Range 66 West, 6th P.M., Weld County, Colorado.
- D. Because Ms. Fillinger also owned the Property at the time she entered into the Shareholder's Agreement, Sheep Draw Farms believes that the Shareholder's Agreement was also intended to address water service to the Property as part of the Fillinger farm. The City disagrees that the Shareholder's Agreement was intended to address water service to the Property. The parties desire to resolve this disagreement.
- E. Section 14.24.80 of the Greeley Municipal Code requires landowners located outside the City who request domestic water service from the City to transfer, at no cost to the City, certain water rights, including Northern Colorado Water Conservancy District allotments, irrigation water and carriage rights of such water.
- F. Sheep Draw Farms is willing to transfer some of the water rights historically associated with the Property to the City in advance of an actual request for water service to the Property, and the City is willing to agree to provide water service to the Property, as more particularly described herein.

WHEREFORE, in consideration of the mutual promises contained herein, the City and Sheep Draw Farms hereby agree as follows:



AGREEMENT

1. Pre-Dedication. As a condition precedent to the City's obligation to provide potable water service from its municipal water system to the Property, Sheep Draw Farms shall dedicate and convey to Greeley by assignment the following water rights (the "Greeley-Loveland System Water Rights") and deliver the stock certificates therefor to the City within 10 business days of the effective date of this Agreement:

<i>Water Right</i>	<i>Shares/Rights</i>
Greeley and Loveland Irrigation Company ("GLIC")	14
Loveland and Greeley Reservoir a/k/a Lake Loveland ("LL")	2.5

At the same time as it dedicates and conveys the Greeley-Loveland System Water Rights to the City, Sheep Draw Farms shall execute and deliver to the City the Covenants Restricting Irrigation in the form attached hereto as Exhibit B, that would restrict future irrigation of the Property; provided, however, that such covenants shall be subject to Sheep Draw Farms' leaseback right as described in Paragraph 6 of this Agreement.

2. Raw Water Credit. Upon dedicating and conveying to the City the Greeley-Loveland System Water Rights, the City shall credit the Property with a total of five-hundred sixty-two (562) acre-feet of credit towards satisfaction of City raw water transfer requirements. Such credit shall only be available to satisfy City raw water transfer requirements for the Property, and no refund of such credit shall be available if, after full development of the Property, the amount of such credit exceeds the amount needed to satisfy City raw water transfer requirements for the Property..

3. Additional Raw Water Supplies; Future Residential Raw Water Dedication Requirements for Property. Should the total raw water required for all desired water service to the Property exceed the 562 acre-feet previously credited hereunder, Sheep Draw Farms may dedicate and transfer to the City some or all of its 60 units of Colorado-Big Thompson Project water ("C-BT" units) available under its allotment contract with the Northern Colorado Water Conservancy District and associated with the Property at the rate of 0.75 acre-feet of credit per C-BT unit (i.e., a total of 45 acre-feet of raw water credit is available from such 60 C-BT units) or, at its election, may otherwise satisfy any shortfall of raw water credit pursuant to then-existing provisions of the Greeley Municipal Code and policies of the City. The City agrees that the per-acre residential raw water requirement for the Property shall not exceed its current 3 ac-ft per acre ratio.

4. Allocation of Raw Water Credit within Property. Prior to transfer of any portion of the Property, Sheep Draw Farms shall be entitled to allocate dedicated raw water credits to portions of the Property in its discretion in a signed document recorded in the records of the Weld County Clerk and Recorder. In the absence of such a recorded

allocation, the City shall allocate available raw water credits pro rata to each acre of the Property.

5. Water Service and Possible Future Annexation. Greeley commits to serve the Property with water service up to the level of raw water credits dedicated as described herein. Greeley's commitment to provide water service to the Property as set forth herein is subject to Sheep Draw Farms' payment of customary fees, and its compliance with Greeley Water and Sewer Department construction and other standards for the provision of such water service. Such water service shall be furnished to all or portions of the Property upon request of the owner(s) thereof regardless of whether the Property is within or outside City boundaries, provided that 1) Sheep Draw Farms hereby consents to annexation of the Property to the City of Greeley upon the City of Greeley's request (such request to include a written commitment to use best efforts to complete the annexation with diligence; and 2) other provisions of Water and Sewer Board and Joint City Council Resolution No. 66, 1998 (a copy of which is attached hereto as Exhibit ~~B~~^C), to the extent not expressly addressed herein, shall continue to apply to any water service the City provides to the Property while located outside City boundaries. This Agreement does not guarantee annexation, and City of Greeley approval of zoning for, or other aspects of, particular development of the Property shall occur in accordance with then-existing City of Greeley planning and development requirements.

6. Temporary Lease of Greeley-Loveland System Water Rights for Agricultural Irrigation of Property Prior to development of any of the Property, Sheep Draw Farms may lease the Greeley-Loveland System Water Rights dedicated and conveyed hereunder back from the City for agricultural irrigation of the Property at a lease rate equal to 105% of the GLIC and LL assessments charged to the City for each year in which Sheep Draw Farms elects to lease said water rights; Sheep Draw Farms shall pay the City such rental amounts within thirty (30) days of receiving a billing statement from the City. The initial term of such leaseback shall be five (5) years commencing on April 1, 2009. At the conclusion of such initial term such leaseback shall automatically renew for one or more additional one-year terms unless, on or before January 1 of the year in which such leaseback is subject to automatic renewal, either party provides the other party with written notice of nonrenewal by delivering such notice to the other party at the address specified herein.

7. Entire Agreement. This Agreement constitutes a complete understanding of the parties and merges and supersedes any and all other discussions, proposals, agreements, and undertakings, either oral or written, between the parties with respect to the subject matter hereof.

8. Amendment. This Agreement shall not be changed, modified, terminated, or amended except by a writing signed by each party to this Agreement.

9. Paragraph Headings. Paragraph headings contained in this Agreement are inserted for convenience of reference only, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.



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10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

11. Existing Water Line on Property. There appears to be an existing unauthorized water line to the Property serving one residence. Prior to the final approval of any additional part of the Property for development that triggers the City's water service commitment, Sheep Draw Farms shall disconnect or, at the City's discretion, bring such line into full legal compliance with applicable City requirements. Sheep Draw Farms shall receive no credit for such line towards City plant investment fees or raw water requirements.

12. Notices. Notices or other communications provided for herein or given in connection herewith shall be deemed given, made, delivered or served if made in writing and delivered personally or sent by registered or certified United States mail, return receipt requested and postage prepaid, to:

If to City:

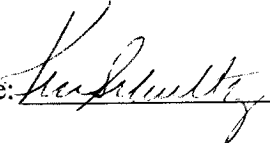
City of Greeley Water and Sewer Department
Attn: Water Resource Manager
1100 10th Street
Greeley, Colorado 80631

If to Sheep Draw Farms:

13. Release of Prior Claims. By execution of this Agreement, the parties release each other from any and all rights, covenants, obligations, liabilities, and claims they could assert against one another arising from the disputed applicability of the Shareholder's Agreement to the Property.

The parties have executed this Agreement effective as of the date first set out above.

SHEEP DRAW FARMS, LLC

Name: 

Title: Member



3600151 01/19/2009 10:51A Weld County, CO
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STATE OF COLORADO)
) ss.
COUNTY OF Weld)

Subscribed under oath before me on 12/9/08 by
Ken Schultz, as member of Sheep Draw Farms, LLC, a Colorado
Limited Liability Company.

My commission expires: 06/15/2009

Danisha S Carter
Notary Public



3600151 01/19/2009 10:51A Weld County, CO
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CITY OF GREELEY, A COLORADO MUNICIPAL CORPORATION



By: [Signature]
Mayor

By: Betsy A. Holder
City Clerk

ATTESTED AND
APPROVED AS TO SUBSTANCE:

By: [Signature]
City Manager and
Secretary to Board

APPROVED:

By: [Signature]
Chair, Water and Sewer Board

APPROVED AS TO LEGAL FORM:

By: [Signature]
City Attorney

APPROVED AS TO LEGAL FORM:

By: [Signature]
Counsel to Board

APPROVED AS TO AVAILABILITY OF FUNDS:

By: [Signature]
Director of Finance

02/13/2006 9:14:28 AM lvv LVV

File No.: 821-H0094473-084-AR

Exhibit A

Parcel 1:

A tract of land located in the West Half of the Northeast Quarter ($W \frac{1}{2} NE \frac{1}{4}$) of Section 12, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado, described as follows:

Beginning at the NE Corner of said $W \frac{1}{2}$ of the $NE \frac{1}{4}$; Thence South 240 feet; Thence West 147 feet; Thence North 240 feet; Thence East 147 feet to the point of beginning.

EXCEPTING THEREFROM that parcel conveyed to the Department of Highways, State of Colorado, by Deed recorded May 9, 1962 in Book 1614 at Page 153, which is more particularly described as follows:

Beginning at a point on the West property line from which the NW Corner of the $NE \frac{1}{4}$ of said Section 12 bears North $88^{\circ}43'30''$ West, 1136.6 feet; Thence along said West property line, North $00^{\circ}45'$ West, 61.2 feet to the North line of Section 12; Thence along the North line of Section 12, North $88^{\circ}11'30''$ East, 147.00 feet to the NE Corner of the $NW \frac{1}{4}$ of the $NE \frac{1}{4}$ of said Section 12;

Thence along the East line of the $NW \frac{1}{4}$ of the $NE \frac{1}{4}$, South $00^{\circ}45'$ East, 61.1 feet; Thence South $88^{\circ}10'$ West, 147.00 feet, more or less, to the point of beginning,

County of Weld, State of Colorado.

Parcel 2:

A parcel of land being a part of the $E1/2$ of Section 12, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado and being more particularly described as follows:

Beginning at the SE Corner of said Section 12 and assuming the East Quarter Corner of said Section 12 to bear North $00^{\circ}43'49''$ West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2683.38 feet with all other bearings contained herein relative thereto. From said East Quarter Corner the NE Corner of said Section 12 bears North $00^{\circ}43'37''$ West a distance of 2683.03 feet;

Thence North $00^{\circ}43'49''$ West along the East line of said $SE1/4$ a distance of 155.00 feet to the NE Corner of that parcel of land as described in that Rule and Order as recorded September 16, 1968 in Book 599 as Reception No. 1521141 of the records of the WCCR. Said point being the TRUE POINT OF BEGINNING.

Thence along the Northerly line of the aforesaid parcel of land by the following Three (3) courses and distances:

Thence South $88^{\circ}00'11''$ West a distance of 30.00 feet to the Westerly Right-Of-Way (ROW) line of Ninety-fifth Avenue (95th Ave) (also known as Weld County Road #25 (WCR#25))

Thence South $20^{\circ}53'41''$ West a distance of 134.62 feet;

Thence South $88^{\circ}41'20''$ West a distance of 2518.27 feet to the West line of the aforesaid $SE 1/4$;

Thence North $00^{\circ}33'55''$ West along said West line a distance of 2627.76 feet to the Center Quarter Corner of said Section 12;

Thence continuing North $00^{\circ}33'55''$ West along the West line of West Half of the NE Quarter ($W1/2 NE1/4$) a distance of 2595.89 feet Southwest Corner of that parcel of land as described in that Special Warranty Deed as recorded January 14, 1953 in Book 1635 on Page 385 as Reception No. 1398521 of the records of WCCR;



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File No.: 821-H0094473-084-AR

Thence North 87°31'44" East along the South line of said parcel of land a distance of 1145.02 feet to the SE Corner of the aforesaid parcel of land. Said point being the intersection with the West line of that parcel of land as described in that Personal Representative Deed as recorded September 14, 2000 as Reception No. 2793960 of the records of the WCCR;

Thence along a portion of the Westerly line and the Southerly line of the aforesaid parcel of land by the following Two (2) courses and distances:

Thence South 00°38'47" East a distance of 178.84 feet;

Thence North 87°33'03" East a distance of 119.06 feet to a point approximately One foot (1') Easterly of an existing fence line;

Thence along a line approximately 1' Easterly of an existing fence line by the following Three (3) courses and distances:

Thence South 01°09'43" East a distance of 1993.61 feet; Thence South 02°22'02" East a distance of 61.87 feet;

Thence South 00°37'52" East a distance of 702.43 feet to a point approximately One foot (1') Northerly of an existing fence line;

Thence South 41°10'36" East along a line approximately 1' Northerly of an existing fence line 12.80 feet to the intersection with the West line of the NE1/4 of the SE1/4 of said Section 12, also being the West line of Lot A of Recorded Exemption No. 0957-12-1-RE 3076 as recorded September 26, 2001 as Reception No. 2886582 of the records of the WCCR;

Thence South 00°38'45" East along the West line of said NE1/4 SE1/4, also being the West line of said Lot A a distance of 37.38 feet to the SW Corner of said Lot A;

Thence along the South line of said Lot A by the following Ten (10) courses and distances:

Thence South 39°59'43" East a distance of 174.32 feet;

Thence South 55°43'43" East a distance of 155.00 feet;

Thence North 57°46'17" East a distance of 58.00 feet;

Thence North 12°46'17" East a distance of 104.00 feet;

Thence North 41°31'17" East a distance of 96.00 feet;

Thence South 81°18'43" East a distance of 157.00 feet;

Thence South 72°28'43" East a distance of 136.50 feet;

Thence South 63°23'43" East a distance of 497.00 feet;

Thence South 70°13'43" East a distance of 146.00 feet;

Thence South 87°08'43" East a distance of 57.45 feet to the East line of the aforesaid SE1/4, also being the SE Corner of the aforesaid Lot A; Thence South 00°43'49" East along the East line of said SE1/4 a distance of 1754.07 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM

Any portion of the above described property which may be located within the parcel deeded by Bargain and Sale Deed to Tri-Pointe Residential Metropolitan District recorded May 30, 2001 at Reception No. 2852413,

AND ALSO EXCEPTING THEREFROM

Any portion of the above described property which may be located within the parcel deeded by Quit Claim Deed to Douglas L. DeTienne and Dawn R. DeTienne recorded February 3, 2005 at Reception No. 3258686.



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File No.: 821-H0094473-084-AR

County of Weld, State of Colorado

Parcel 3:

A parcel of land being part of Lot A of Recorded Exemption No. 0957-12-1-RE3076 as recorded September 26, 2001 at Reception No. 2886582 of the records of the Weld County Clerk and Recorder (WCCR) and being part of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twelve (12), Township Five North (T.5N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado, and being more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 12 and assuming the East line of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 12 as bearing North $00^{\circ}43'49''$ West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2683.38 feet with all other bearings contained herein relative thereto:

Thence North $00^{\circ}43'49''$ West along said East line a distance of 1909.07 feet to the Southeast Corner of said Lot A. Said point being the TRUE POINT OF BEGINNING:

Thence along the South line of said Lot A by the following Ten (10) courses and distances:

Thence North $87^{\circ}08'43''$ West a distance of 57.45 feet;
Thence North $70^{\circ}13'43''$ West a distance of 146.00 feet;
Thence North $63^{\circ}23'43''$ West a distance of 497.00 feet;
Thence North $72^{\circ}28'43''$ West a distance of 136.50 feet;
Thence North $81^{\circ}18'43''$ West a distance of 157.00 feet;
Thence South $41^{\circ}31'17''$ West a distance of 96.00 feet;
Thence South $12^{\circ}46'17''$ West a distance of 104.00 feet;
Thence South $57^{\circ}46'17''$ West a distance of 58.00 feet;
Thence North $55^{\circ}43'43''$ West a distance of 155.00 feet;
Thence North $39^{\circ}58'43''$ West a distance of 174.32 feet to the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$, also being the West line of said Lot A a distance of 37.38 feet to a point approximately One foot (1') Northerly of an existing fence line;
Thence along a line approximately 1' Northerly of an existing fence line, and its Easterly extension by the following Nine (9) courses and distances:
Thence South $41^{\circ}10'36''$ East a distance of 200.17 feet;
Thence South $54^{\circ}51'27''$ East a distance of 90.58 feet;
Thence North $88^{\circ}36'30''$ East a distance of 60.38 feet;
Thence North $22^{\circ}58'01''$ East a distance of 165.95 feet;
Thence North $62^{\circ}24'20''$ East a distance of 71.81 feet;
Thence South $81^{\circ}29'20''$ East a distance of 198.55 feet;
Thence South $65^{\circ}00'00''$ East a distance of 250.71 feet;
Thence South $63^{\circ}34'15''$ East a distance of 315.54 feet;
Thence South $69^{\circ}08'41''$ East a distance of 313.61 feet to the intersection with the East line of said SE $\frac{1}{4}$;
Thence South $00^{\circ}43'49''$ East along said East line a distance of 26.53 feet to the TRUE POINT OF BEGINNING,
County of Weld, State of Colorado

EXHIBIT B

COVENANTS RESTRICTING IRRIGATION

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado municipal corporation, acting by and through its Water and Sewer Board (the "City"), with the maximum benefit available from the present and future use of water pursuant to the water rights acquired or to be acquired by the City and described in Exhibit A attached hereto and made a part hereof (the "Water Rights"), Sheep Draw Farms LLC, a Colorado limited liability company (the "Declarant") agrees, warrants and covenants, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarant's own behalf and on behalf of successors in interest, that upon notice from the City, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit B attached hereto and made a part hereof (the "Land").

Beginning one hundred and eighty (180) days from receiving written notice from the City, thereafter Declarant and Declarant's successors in interest shall not irrigate the Land except as otherwise provided herein. Specifically, but without limitation, Declarant and Declarant's successors in interest shall not use the water rights described on Exhibit A, attached hereto and made a part hereof, to irrigate the Land, except as otherwise provided herein.

These covenants shall not prohibit Declarant or Declarant's successors in interest from irrigating the Land (i) with water rights which may in the future be transferred to such lands and judicially approved for such use through an appropriate Water Court proceeding, and in accordance with any Court decrees entered or substitute water supply plans approved pursuant to water right applications filed by the City or a successor in interest to change the use of the Water Rights consistent with these covenants; (ii) with water from a well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation; (iii) with water which is not tributary to the South Platte River or any of its tributaries; (iv) with treated potable water supplied by the City or a municipal or quasi-municipal government water provider; (v) with water from permitted exempt wells of the type authorized pursuant to C.R.S. § 37-92-602, as amended from time to time, or other similar statute; or (vi) water from an allotment contract with the Northern Colorado Water Conservancy District or its Municipal Subdistrict for the Colorado-Big Thompson Project or Windy Gap Project water pursuant to the District's policies and regulations. Unless so irrigated, Declarant agrees that the property subject to these covenants will not be planted with crops which are capable of extending roots into the underlying groundwater, including but not necessarily limited to the growing of alfalfa.

The foregoing covenants of Declarant shall burden, attach to and run with the Land and shall be binding upon Declarant's successors, assigns and any other persons who acquire an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to and run with the Water Rights, and shall inure to the benefit of the City's successors, assigns and any other persons who acquire an ownership interest in the



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Water Rights. Declarant warrants and represents that such covenants shall entitle the City to the first and prior right to claim credit for the dry-up or nonirrigation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by the City or its successor in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of the City or its successor in interest. Any notice may be sent to the Declarant by prepaid U. S. Mail to the Declarant at _____.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the ____ day of _____, _____.

SHEEP DRAW FARMS, LLC

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed under oath before me on _____ by
_____, as _____ of Sheep Draw Farms, LLC, a Colorado
Limited Liability Company.

My commission expires: _____

Notary Public

**EXHIBIT A TO
COVENANTS RESTRICTING IRRIGATION**

Specifically, but without limitation, Declarant and Declarant's successors in interest shall not use the following water rights to irrigate the Land: a) Water rights represented by shares of stock in the Greeley and Loveland Irrigation Company ("GLIC"), including without limitation 14 GLIC shares previously transferred from Declarant to the City; b) Water rights represented by rights in Loveland and Greeley Reservoir a/k/a/ Lake Loveland ("LL"), including without limitation 2.5 LL rights previously transferred by Declarant to the City; and c) Water rights represented by shares of stock in the Seven Lakes Reservoir Company ("SLRC").

EXHIBIT B TO COVENANTS RESTRICTING IRRIGATION

Parcel 1:

A tract of land located in the West Half of the Northeast Quarter ($W \frac{1}{2} NE \frac{1}{4}$) of Section 12, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado, described as follows:

Beginning at the NE Corner of said $W \frac{1}{2}$ of the $NE \frac{1}{4}$; Thence South 240 feet; Thence West 147 feet; Thence North 240 feet; Thence East 147 feet to the point of beginning.

EXCEPTING THEREFROM that parcel conveyed to the Department of Highways, State of Colorado, by Deed recorded May 9, 1962 in Book 1614 at Page 153, which is more particularly described as follows:

Beginning at a point on the West property line from which the NW Corner of the $NE \frac{1}{4}$ of said Section 12 bears North $88^{\circ}43'30''$ West, 1136.6 feet; Thence along said West property line, North $00^{\circ}45'$ West, 61.2 feet to the North line of Section 12; Thence along the North line of Section 12, North $88^{\circ}11'30''$ East, 147.00 feet to the NE Corner of the NW $\frac{1}{4}$ of the $NE \frac{1}{4}$ of said Section 12;

Thence along the East line of the NW $\frac{1}{4}$ of the $NE \frac{1}{4}$, South $00^{\circ}45'$ East, 61.1 feet; Thence South $88^{\circ}10'$ West, 147.00 feet, more or less, to the point of beginning,

County of Weld, State of Colorado.

Parcel 2:

A parcel of land being a part of the $E1/2$ of Section 12, Township 5 North, Range 67 West of the 6th P.M., Weld County, Colorado and being more particularly described as follows:

Beginning at the SE Corner of said Section 12 and assuming the East Quarter Corner of said Section 12 to bear North $00^{\circ}43'49''$ West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2683.38 feet with all other bearings contained herein relative thereto. From said East Quarter Corner the NE Corner of said Section 12 bears North $00^{\circ}43'37''$ West a distance of 2683.03 feet;

Thence North $00^{\circ}43'49''$ West along the East line of said $SE1/4$ a distance of 155.00 feet to the NE Corner of that parcel of land as described in that Rule and Order as recorded September 16, 1968 in Book 599 as Reception No. 1521141 of the records of the WCCR. Said point being the TRUE POINT OF BEGINNING.

Thence along the Northerly line of the aforesaid parcel of land by the following Three (3) courses and distances:

Thence South $88^{\circ}00'11''$ West a distance of 30.00 feet to the Westerly Right-Of-Way (ROW) line of Ninety-fifth Avenue (95th Ave) (also known as Weld County Road #25 (WCR#25))

Thence South $20^{\circ}53'41''$ West a distance of 134.62 feet;

Thence South $88^{\circ}41'20''$ West a distance of 2518.27 feet to the West line of the aforesaid $SE1/4$;

Thence North $00^{\circ}33'55''$ West along said West line a distance of 2627.76 feet to the Center Quarter Corner of said Section 12;

Thence continuing North $00^{\circ}33'55''$ West along the West line of West Half of the NE Quarter ($W1/2 NE1/4$) a distance of 2595.89 feet Southwest Corner of that parcel of land as described in that Special Warranty Deed as recorded January 14, 1953 in Book 1635 on Page 385 as Reception No. 1398521 of the records of WCCR;

Thence North 87°31'44" East along the South line of said parcel of land a distance of 1145.02 feet to the SE Corner of the aforesaid parcel of land. Said point being the intersection with the West line of that parcel of land as described in that Personal Representative Deed as recorded September 14, 2000 as Reception No. 2793960 of the records of the WCCR;

Thence along a portion of the Westerly line and the Southerly line of the aforesaid parcel of land by the following Two (2) courses and distances:

Thence South 00°38'47" East a distance of 178.84 feet;

Thence North 87°33'03" East a distance of 119.06 feet to a point approximately One foot (1') Easterly of an existing fence line;

Thence along a line approximately 1' Easterly of an existing fence line by the following Three (3) courses and distances:

Thence South 01°09'43" East a distance of 1993.61 feet; Thence South 02°22'02" East a distance of 61.87 feet;

Thence South 00°37'52" East a distance of 702.43 feet to a point approximately One foot (1') Northerly of an existing fence line;

Thence South 41°10'36" East along a line approximately 1' Northerly of an existing fence line 12.80 feet to the intersection with the West line of the NE1/4 of the SE1/4 of said Section 12, also being the West line of Lot A of Recorded Exemption No. 0957-12-1-RE 3076 as recorded September 26, 2001 as Reception No. 2886582 of the records of the WCCR;

Thence South 00°38'45" East along the West line of said NE1/4 SE1/4, also being the West line of said Lot A a distance of 37.38 feet to the SW Corner of said Lot A;

Thence along the South line of said Lot A by the following Ten (10) courses and distances:

Thence South 39°59'43" East a distance of 174.32 feet;

Thence South 55°43'43" East a distance of 155.00 feet;

Thence North 57°46'17" East a distance of 58.00 feet;

Thence North 12°46'17" East a distance of 104.00 feet;

Thence North 41°31'17" East a distance of 96.00 feet;

Thence South 81°18'43" East a distance of 157.00 feet;

Thence South 72°28'43" East a distance of 136.50 feet;

Thence South 63°23'43" East a distance of 497.00 feet;

Thence South 70°13'43" East a distance of 146.00 feet;

Thence South 87°08'43" East a distance of 57.45 feet to the East line of the aforesaid SE1/4, also being the SE Corner of the aforesaid Lot A; Thence South 00°43'49" East along the East line of said SE1/4 a distance of 1754.07 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM

Any portion of the above described property which may be located within the parcel deeded by Bargain and Sale Deed to Tri-Pointe Residential Metropolitan District recorded May 30, 2001 at Reception No. 2852413,

AND ALSO EXCEPTING THEREFROM

Any portion of the above described property which may be located within the parcel deeded by Quit Claim Deed to Douglas L. DeTienne and Dawn R. DeTienne recorded February 3, 2005 at Reception No. 3258686.



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County of Weld, State of Colorado

Parcel 3:

A parcel of land being part of Lot A of Recorded Exemption No. 0957-12-1-RE3076 as recorded September 26, 2001 at Reception No. 2886582 of the records of the Weld County Clerk and Recorder (WCCR) and being part of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twelve (12), Township Five North (T.5N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado, and being more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 12 and assuming the East line of the Southeast Quarter (SE $\frac{1}{4}$) of said Section 12 as bearing North 00°43'49" West, being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2683.38 feet with all other bearings contained herein relative thereto;

Thence North 00°43'49" West along said East line a distance of 1909.07 feet to the Southeast Corner of said Lot A. Said point being the TRUE POINT OF BEGINNING:

Thence along the South line of said Lot A by the following Ten (10) courses and distances:

Thence North 87°08'43" West a distance of 57.45 feet;
Thence North 70°13'43" West a distance of 146.00 feet;
Thence North 63°23'43" West a distance of 497.00 feet;
Thence North 72°28'43" West a distance of 136.50 feet;
Thence North 81°18'43" West a distance of 157.00 feet;
Thence South 41°31'17" West a distance of 96.00 feet;
Thence South 12°46'17" West a distance of 104.00 feet;
Thence South 57°46'17" West a distance of 58.00 feet;
Thence North 55°43'43" West a distance of 155.00 feet;
Thence North 39°58'43" West a distance of 174.32 feet to the West line of said NE $\frac{1}{4}$ SE $\frac{1}{4}$, also being the West line of said Lot A a distance of 37.38 feet to a point approximately One foot (1') Northerly of an existing fence line;

Thence along a line approximately 1' Northerly of an existing fence line, and its Easterly extension by the following Nine (9) courses and distances:

Thence South 41°10'36" East a distance of 200.17 feet;
Thence South 54°51'27" East a distance of 90.58 feet;
Thence North 88°36'30" East a distance of 60.38 feet;
Thence North 22°58'01" East a distance of 165.95 feet;
Thence North 62°24'20" East a distance of 71.81 feet;
Thence South 81°29'20" East a distance of 198.55 feet;
Thence South 65°00'00" East a distance of 250.71 feet;
Thence South 63°34'15" East a distance of 315.54 feet;
Thence South 69°08'41" East a distance of 313.61 feet to the intersection with the East line of said SE $\frac{1}{4}$;
Thence South 00°43'49" East along said East line a distance of 26.53 feet to the TRUE POINT OF BEGINNING,
County of Weld, State of Colorado



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EXHIBIT C

WATER AND SEWER BOARD AND CITY COUNCIL JOINT RESOLUTION NO. 66, 1998

GUIDING PRINCIPLES FOR OUTSIDE SERVICES

WHEREAS, development in the region of Greeley's water and/or sewage collection system has generated and will continue to generate request for outside-the-City service; and

WHEREAS, the Greeley City Council and the Water and Sewer Board desire to establish guiding principles for considering outside service requests; and

WHEREAS, such principles should be consistent with land use policies of the City and County; and

WHEREAS, such principles should assure that the interests of Greeley citizens who are the owners of the water and sewer systems, are protected and enhanced.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AND THE WATER AND SEWER BOARD OF THE CITY OF GREELEY, COLORADO:

1. Service agreements with other municipalities are wholesale agreements while agreements with individual property owners are retail. Neither type of agreement shall degrade service for City customers or system reliability.
2. Properties requesting retail water or sewer service which are outside but adjacent to Greeley city limits must be willing to annex prior to receiving services.
3. Properties requesting retail water or sewer service which are outside, not adjacent to Greeley city limits, but within the city-established growth area (defined by the comprehensive plan) must execute an agreement to annex when annexation becomes legally permissible and the City so requests.
4. All outside retail water or sewer service agreements shall require the customer to submit to the City all development plans for review and approval for conformance with Greeley's development code, subdivision regulations, and comprehensive plan policies as amended from time to time.
5. Outside wholesale customers, such as Evans and Windsor, shall not diminish Greeley's water rights to inside customers. No risk nor dependency upon Greeley's water rights shall be created by an outside wholesale service agreement. Both retail and wholesale customers shall provide adequate raw water in accordance with City policy.



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6. Outside customers shall not vest in City of Greeley facilities or water rights.

7. Payments for outside service shall be in accordance with rates using cost of service models and which present a financial benefit to Greeley citizens.

8. All outside entities must agree to follow water and sewer policies and standards regarding line extensions, flow measurement, water usage, backflow prevention, industrial wastewater pretreatment, and other requirements, as applicable.

9. Exceptions to this policy may be made by the City Council after receiving a recommendation from the Water and Sewer Board and the City Manager.

10. All water or sewer line extensions or connections outside the City of Greeley shall be in accordance with policies of the appropriate municipal and county jurisdiction and explicitly approved by such jurisdiction(s).


PASSED AND ADOPTED, SIGNED, AND APPROVED this 6th day of October, 1998.

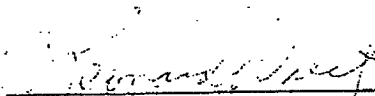
ATTEST:

WATER AND SEWER BOARD


Mayor


Water and Sewer Board Chairman


City Clerk


City Manager



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WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 8

TITLE: REVIEW AND RECOMMEND CITY COUNCIL
 APPROVE LOWER CACHE LA POUDRE
 RIVER MONITORING ALLIANCE MOU

RECOMMENDATION: REVIEW AND RECOMMEND TO COUNCIL

ADDITIONAL INFORMATION:

This Memorandum of Understanding sets the terms and conditions by which the City of Greeley, City of Fort Collins, Town of Windsor, Carestream Health, Inc., Boxelder Sanitation District, South Fort Collins Sanitation District, and Leprino Foods Company will cooperate to establish a water quality monitoring program on the lower Cache la Poudre River, by establishing a unified process for collecting water quality measurements at long-term monitoring sites and sharing this water quality data for use in the Parties' Section 402 Clean Water Act (National Pollution Discharge Elimination System) permit requirements and state law water quality requirements enforced by the Colorado Department of Public Health and Environment.

For approval purposes, this Memorandum of Understanding constitutes an Intergovernmental Agreement and is a renewal of an agreement previously executed by Greeley and other parties in 2007. Under Section 2.07.040 of the Greeley Municipal Code, the City may enter into contracts or cooperative or joint activities with other governmental bodies so long as the City Council approves such agreements by resolution or ordinance.

Lower Poudre River Monitoring Alliance Memorandum of Understanding

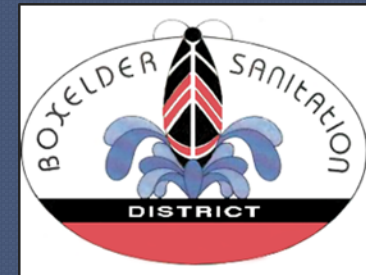


Lower Poudre River Monitoring Alliance

Memorandum of Understanding

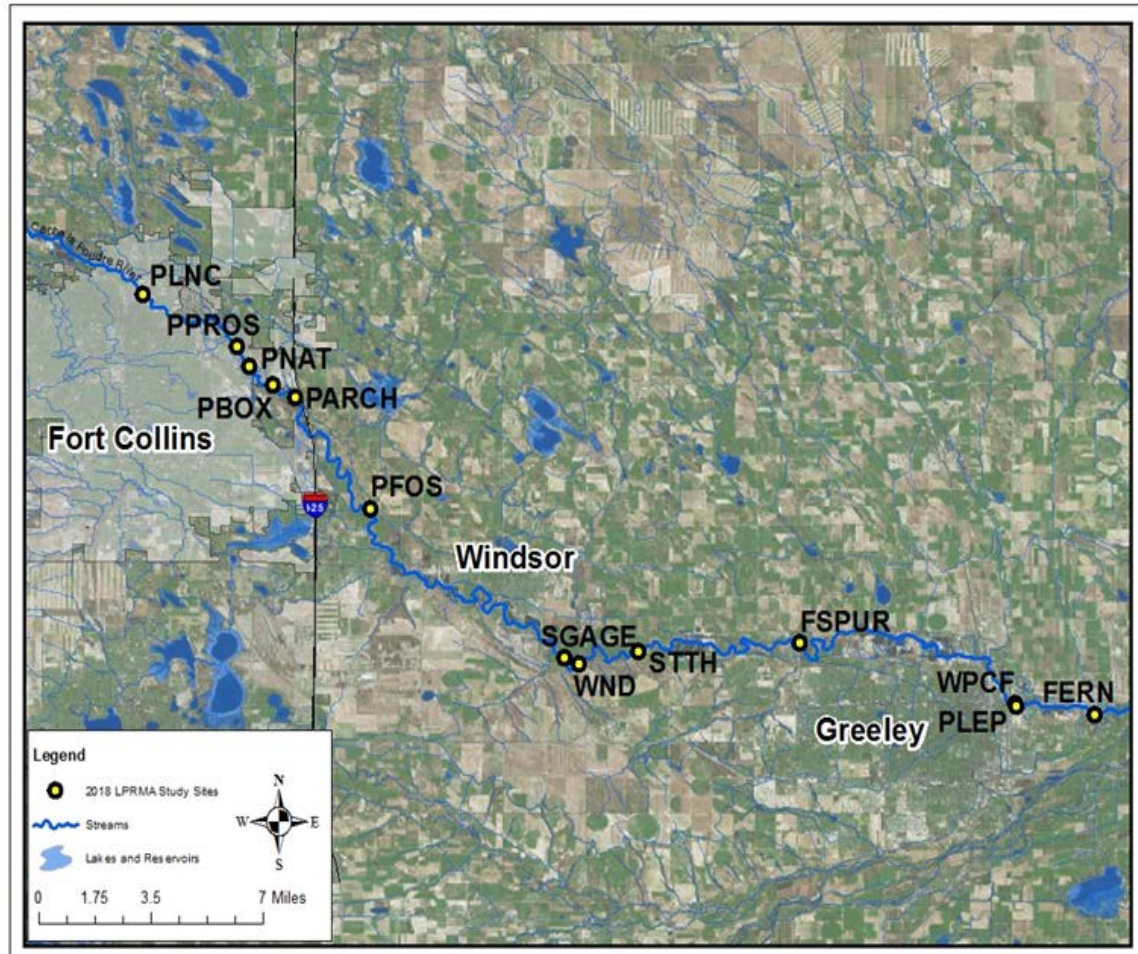
- Update of an agreement that was executed in 2007
- Sets the terms and conditions by which the group participants follow an operating plan to sample, analyze and report water quality data on the lower Poudre River basin using the same methods, laboratories and schedule
- Provides ambient (upstream) water quality data for the NPDES permitting processes
- Reduces the frequency of required effluent monitoring under Greeley's NPDES-permit pursuant to exiting CDPHE Water Quality Policy #20 (Baseline Monitoring Frequency)
- Data used to assess water quality and health of the lower Cache la Poudre River
- Data is uploaded and shared via AQMS, CDSN (<http://www.coloradowaterdata.org/>)
- \$17,160 annual analysis fee for low level metals, nutrients, hardness, alkalinity, oxygen, pH, E.coli bacteria, aquatic insect counts, and fish counts at 3 sites at various frequencies

Monitoring Group Participants



Lower Cache la Poudre River Monitoring Sites

- 13 sites
- Each party responsible for costs associated with its own site(s)
- ~ 43 miles
- WWTP Outfalls
- 40 years of historic record at some sites



Lower Poudre River Monitoring Alliance

Memorandum of Understanding

- Term: Perpetual unless all but one of the Parties withdraw
- Termination: Any Party may withdraw from this Agreement by providing written notice to the other Parties within fourteen (14) days after the first quarterly meeting in any Operating Year
- Staff Recommendation to Board: Recommend approval to City Council
- Next Steps: Go through IGA approval process
 - Resolution approving MOU at May 7th City Council Meeting

Questions?



**MEMORANDUM OF UNDERSTANDING REGARDING
WATER QUALITY MONITORING ON THE LOWER CACHE LA POUDE RIVER
(Lower Cache la Poudre River Monitoring Alliance Program)**

This Memorandum of Understanding (“Agreement”) is entered into by and between the following Parties: (1) the City of Fort Collins, Colorado, a Colorado municipal corporation (“Fort Collins”); (2) the City of Greeley, Colorado, a Colorado municipal corporation (“Greeley”); (3) the Town of Windsor, Colorado, a Colorado municipal corporation (“Windsor”); (4) Carestream Health, Inc., a Delaware corporation (“Carestream”); (5) Boxelder Sanitation District, a Colorado special district (“Boxelder”); (6) South Fort Collins Sanitation District, a Colorado special district (“South Fort Collins”); and (7) Leprino Foods Company, a Colorado corporation (“Leprino”) (collectively, the “Parties,” or “The Lower Cache La Poudre River Monitoring Alliance”).

1. BACKGROUND. The federal Clean Water Act, among other things, prohibits discharging pollutants to the waters of the United States without a National Pollution Discharge Elimination System (“NPDES”) permit. NPDES permits contain specific requirements including, but not limited to, discharge limits, sampling frequencies, and reporting requirements that are intended, among other things, to protect designated uses of receiving waters. The Colorado Department of Public Health and Environment (“CDPHE”) currently administers the NPDES permitting program in the State of Colorado.

Each of the Parties to this Agreement operates one or more NPDES-permitted wastewater treatment facilities along the lower Cache la Poudre River. For the purposes of this Agreement, the lower Cache la Poudre River is defined as the Cache la Poudre River from approximately Linden Street in Fort Collins downstream to Fern Avenue in Greeley. The Lower Cache la Poudre River Monitoring Alliance is a group that operates a collaborative Water Quality Monitoring Program (“Program”) among entities that operate NPDES-permitted wastewater treatment facilities that are focused on NPDES permit compliance, among other goals and objectives set forth in this Agreement. Benefits of this collaborative program to each participating Party include, but are not necessarily limited to: reduced water quality monitoring costs; access to certain water quality data collected pursuant to this Agreement; and an open forum for data and information exchange and communication between the Parties.

2. WATER QUALITY MONITORING PROGRAM. The goals of the Water Quality Monitoring Program are to: 1) provide data for the NPDES permitting processes; 2) pursuant to existing CDPHE policies, reduce the frequency of required effluent monitoring under NPDES-permits for interested Parties; and 3) maintain or improve the water quality of the lower Cache la Poudre River.

The specific Program objectives are to:

- (1) Collect physical, chemical, and/or biological water quality measurements at long-term monitoring sites within the lower Cache la Poudre River to develop data; and
- (2) Share among the Parties the data developed from the long-term monitoring sites for the Parties to provide ambient water quality data to be used in the NPDES permitting process and their respective requirements under CDPHE Water Quality Policy #20 (Baseline

Monitoring Frequency).¹

3 ANNUAL SCHEDULE. The Program generally operates on flexible “Operating Years” that include: 1) the development of an Annual Operating Plan between January and March; 2) water quality monitoring from approximately April through March of the following year; 3) completion of laboratory analytical reports; and 4) data uploaded to the Ambient Water Quality Monitoring System (“AWQMS”) database by April 15th the following year.

4 ANNUAL OPERATING PLAN. Fort Collins will prepare and distribute a draft Annual Operating Plan for all Parties to review before the first quarterly meeting. Following discussion, necessary edits will be made to the draft and the Annual Operating Plan will be approved/disapproved by each Party at the 2nd quarterly meeting (see Meetings Section 9 (Meetings) below). It is not a requirement of this Agreement that the Annual Operating Plan be formally signed by the Parties to be approved for the Operating Year; however, some form of written documentation (e.g. an email) to all Parties is required. All Parties must approve the Annual Operating Plan for it to be effective for the Operating Year. If a proposed Annual Operating Plan is not approved by all Parties, nothing herein shall preclude any Party from performing any or all of the tasks contemplated under the Annual Operating Plan outside of this Agreement. The Annual Operating Plan will be consistent with the terms and conditions of this Agreement.

Each Annual Operating Plan must include:

- 1) Study site locations (directions to site, description, coordinates, and map(s));
- 2) The Party or Parties responsible for each study site;
- 3) A list of all water quality parameters to be collected at each location;
- 4) The dates of sampling, for each parameter and site;
- 5) The duration and frequency of monitoring, for each parameter, at each site;
- 6) Sample collection and laboratory analytical methods;
- 7) The entity collecting and analyzing data for each parameter;
- 8) Estimated costs for collection and analysis of each parameter at each study site;
- 9) Estimated costs attributed to each Party during Operating Year;
- 10) Contact information for each Party; and
- 11) Any other pertinent information agreed upon by the Parties during the development of each Annual Operating Plan

5 DATA COLLECTION. The chemical, physical, and biological measurements are to be collected using scientifically-defensible field methods and associated quality assurance/quality control (“QA/QC”) across all study sites, among other reasons, to ensure high quality data results. Field methods and QA/QC will be determined during the development of each Annual Operating Plan. The Parties agree that Fort Collins will select a contractor to collect fish and macroinvertebrate samples for the Program.

6 DATA ANALYSES. The specific water quality parameters to be analyzed at each site in any Operating Year will be determined by the responsible Party or Parties and set forth in the Annual Operating Plan. In an effort to maximize comparability between sites, data will be collected

¹ Currently available at: <https://www.colorado.gov/pacific/sites/default/files/WQP20.pdf>

and analyzed using scientifically-defensible methods, including QA/QC.

All chemical and physical laboratory analyses must be performed by a CDPHE-certified laboratory using USEPA approved methods (Title 40 §136 of the Code of Federal Regulations).

The Parties agree that Fort Collins will coordinate all fish and macroinvertebrate data analyses for the Program.

7. REPORTING. Electronic laboratory data reports will be completed for all parameters and sites included under each Annual Operating Plan. All data generated under this Agreement that have passed QA/QC shall be submitted to CDPHE through the Colorado Data Sharing Network (“CDSN”). All Parties under this agreement as well as the public have access to data generated by the Program through the CDSN and AWQMS.

8. PROVISIONAL DATA. Data that have not passed a QA/QC review shall be considered provisional. To the extent permitted by law, only data developed under this Agreement that have passed a QA/QC review will be made available to the public. Each Party shall ensure that data uploaded to the CDSN have passed a QA/QC review. Parties may choose to provide provisional data generated under this Agreement directly to a Party’s consultant(s) or third-party contractor(s) of a federal agency for a Party’s purposes; providing data in this manner is not considered dissemination to the public under this Agreement.

Nothing herein shall affect the obligations of a Party to make disclosures to the extent required by law or court order, including, but not limited to, requirements under the Colorado Open Records Act, C.R.S. §24-72- 201 *et seq.*, and other Colorado and federal statutes, court rules, and administrative rules and regulations.

9. MEETINGS. The Parties will meet at least quarterly at an agreed upon time and place. Each Party will designate at least one representative who will attend the meetings, either in person or by telephone. Should the representative(s) be changed, a Party shall provide written notice of the change to the other Parties. Party representatives will, when possible, be staff members and not members of the governing body of a Party. Persons associated with the Parties other than the representative may attend the meetings.

10. COSTS. The Party or Parties responsible for each study site, as set forth in the Annual Operating Plan for each Operating Year, shall be responsible for all laboratory and support costs. Costs of field sampling, laboratory analyses and network support costs at shared sites will generally be split evenly between the responsible Parties, except for costs associated with monitoring and data analyses that are not relevant to a particular Party.

11. TERM, WITHDRAWAL AND TERMINATION. This Agreement will be in effect on the last date it is signed by the Parties and shall be perpetual unless all but one of the Parties withdraw. Any Party may withdraw from this Agreement by providing written notice to the other Parties within fourteen (14) days after the first quarterly meeting in any Operating Year. Any Party may also withdraw from this agreement for failure to appropriate funds pursuant to Section 11. Withdrawal from this Agreement shall not relieve the withdrawing Party from any obligations

resulting from the Party's previous participation, including responsibilities for costs, and shall not waive the withdrawing Party's right to the receipt of laboratory data reports resulting from the Party's previous participation in the Agreement.

12 REMEDIES. If a Party fails to comply with the provisions of this Agreement, the other Parties, after providing written notice to the noncomplying Party, and upon the failure of the noncomplying Party to achieve compliance within twenty-eight (28) days, may seek to recover any costs for which the noncomplying Party is responsible and specific performance.

13 FISCAL CONTINGENCY. Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Parties in fiscal years following the fiscal year in which this Agreement is signed by the Parties shall be subject to appropriation of funds sufficient and intended therefore, with each Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement. Should any Party fail to appropriate such funds, this Agreement shall be terminated or the Party withdrawn from the Agreement upon ninety (90) days written notice of the failure to appropriate such funds, unless sufficient funds are thereafter appropriated prior to the termination of this Agreement.

14 WAIVER. A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement.

15 NOTICES. All notices will be given to the following listed below. Each Party may change its address or contact information for notices under this Agreement upon fourteen (14) days written notice to the other Parties.

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

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

and to Staff: Fort Collins Utilities
 Attn: Watershed Program Manager
 700 Wood Street
 P.O. Box 580
 Fort Collins, Colorado 80522-0580
 rthorp@fcgov.com

To Greeley: City Manager
City Hall
1000 10th Street
Greeley, Colorado 80631

With copy to: Greeley City Attorney
City Center North
1100 10th Street, Ste 400
Greeley, Colorado 80631
cityattorney@greeleygov.com

and to Staff: Greeley Water Pollution Control Facility
Attn: Technical Services Manager
300 East 8th Street
Greeley, Colorado 80631
joe.kunovic@greeleygov.com

To Windsor: Town Manager
301 Walnut Street
Windsor, CO 80550

With copy to: Town Attorney
301 Walnut Street
Windsor, CO 80550

and to Staff: Town of Windsor Public Works
Attn: Wastewater Services Superintendent
301 Walnut Street
Windsor, CO 80550
dmarkham@windsorgov.com

To Carestream: Carestream Health, Inc.
Site Manager
2000 Howard Smith Ave. West
Windsor, CO 80550

With copy to: Carestream Health, Inc.
EHS Manager
2000 Howard Smith Ave. West
Windsor, CO 80550

and to Staff Carestream Health, Inc.
Attn: EHS Specialist/ORC
2000 Howard Smith Ave. West
Windsor, CO 8055

john.dinges@carestream.com

To Boxelder: District Manager
3201 E. Mulberry, Unit Q
P.O. Box 1518
Ft. Collins, CO 80522

To South Fort Collins: Chris Matkins
5150 Snead Dr.
Fort Collins CO 80525

To Leprino: Bryan Wischer
bwischer@leprinofoods.com

With a copy to: Leprino Foods Company
Attn: General Counsel
1830 W. 38th Avenue
Denver, Co 80211

16. ASSIGNMENT. No assignment of this Agreement shall be made by any Party without written approval by the remaining Party or Parties.

17. CONSTRUCTION. This Agreement shall be construed according to its fair meaning as it was intended by the Parties. Captions and headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement. The invalidity or unenforceability of any provision of the Agreement shall not affect any other provision of this Agreement, which shall thereafter be construed in all respects as if the invalid or unenforceable provision were omitted.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein.

19. REPRESENTATIONS. Each Party represents to the other Parties that it has the power and authority to enter into this Agreement and the individuals signing below on behalf of each Party have the authority to execute this Agreement on its behalf and legally bind that Party.

[Remainder of Page Left Blank Intentionally]

CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation

By: _____
Darin A. Atteberry, City Manager

Date: _____

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney's Office

Date: _____

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

APPROVED AS TO SUBSTANCE:

By: _____
Roy Otto, City Manager

Date: _____

AVAILABILITY OF FUNDS:

By: _____
Renee Wheeler, Director of Finance

Date: _____

APPROVED AS TO LEGAL FORM

By: _____
Doug Marek, City Attorney

Date: _____

THE CITY OF WINDSOR, COLORADO, a Colorado municipal corporation,

APPROVED AS TO SUBSTANCE:

By: _____
Shane Hale, City Manager

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Ian McCargar, City Attorney

Date: _____

CARESTREAM HEALTH, INC., a Delaware corporation

By: _____
Christopher Schmachtenberger, Site Manager

Date: _____

BOXELDER SANITATION DISTRICT, a Colorado special district

By: _____
Brian Zick , District Manager

Date: _____

SOUTH FORT COLLINS SANITATION DISTRICT, a Colorado special district

By: _____
Chris Matkins, General Manager

Date: _____

LEPRINO FOODS COMPANY, a Colorado corporation

By: _____ Date: _____
Steve Fritzler, Plant Manager Leprino Foods – Greeley

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 9

TITLE: APPROVE PURCHASE AND SALE
AGREEMENT FOR GIC WATER RIGHTS

RECOMMENDATION: APPROVE PURCHASE AND SALE
AGREEMENT FOR GIC WATER RIGHTS

ADDITIONAL INFORMATION:

Staff recommends that the Water and Sewer Board approve the enclosed Purchase and Sale Agreement for Water Rights with Peckham Development Corporation (“Peckham”). The Agreement contemplates Greeley’s purchase of one (1) share of stock in the Greeley Irrigation Company (“Subject Share”). The total purchase price is \$90,168.00 of which \$80,000.00 is attributable to the Subject Share and \$10,168.00 is attributable to costs incurred by Peckham that the City has agreed to reimburse contingent on and subject to the closing of the transaction.

Greeley Irrigation Company (“GIC”) shares are not typically treated for potable use by Greeley due to their location far downstream of the City’s Bellvue Filter Plant. However, GIC water is useful for supply and operation of the City’s non-potable system and gravel pit storage at the Poudre Ponds complex.

Peckham has agreed to convey dry-up sufficient to facilitate the approval of a future change of use by Greeley. Dry-up will be conveyed via: 1) the assignment of dry-up credits pursuant to a 2013 agreement among the City, Central Colorado Water Conservancy District and others, which allocated physical dry-up acreage on properties historically irrigated by this block of GIC shares and dry-up due to urbanization as determined in Case Nos. 96CW658 and 11CW20; and 2) conveyance of a new dry-up covenant on the historically irrigated acreage.



Water Rights Acquisition Peckham Development Corp.

April 17, 2019

Purchase & Sale Overview

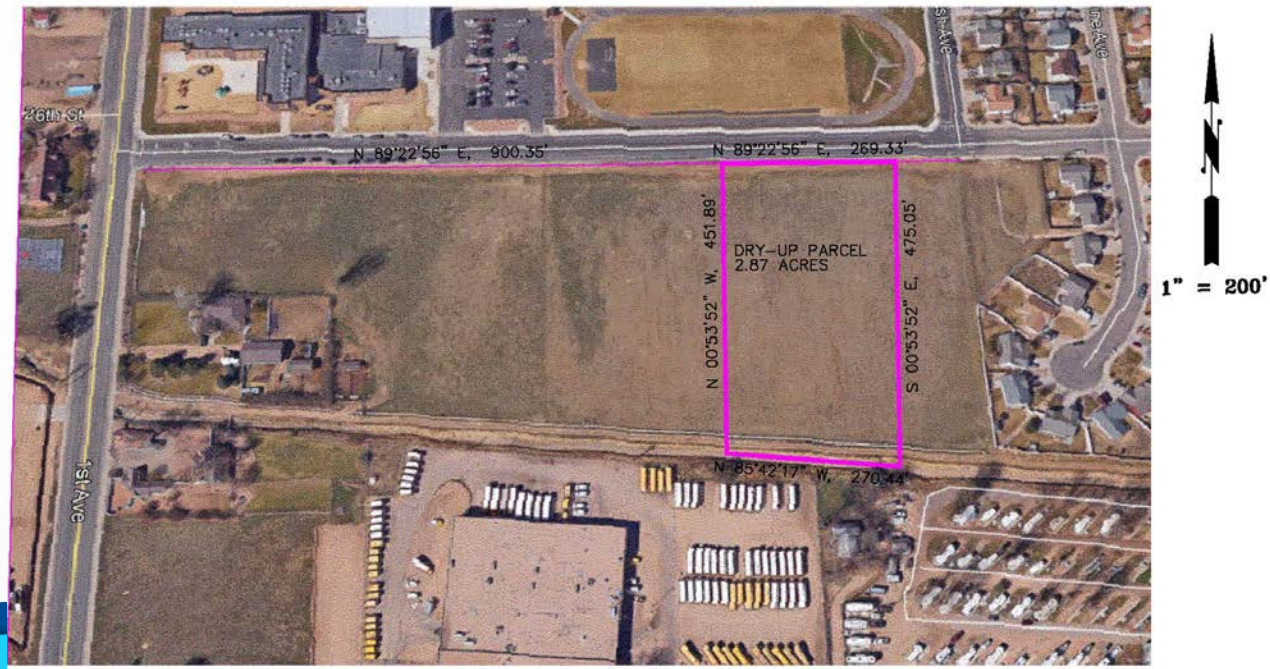
- Water only purchase
 - 1 share Greeley Irrigation Company
 - Jim Smith farm
- \$90,168
 - \$80,000/share + \$10,168/share fees
 - Fees include 2019 assessment, survey costs, share trace, brokerage, etc.
 - Market range: \$60,000 - \$83,000 (2016-2018)
- Yield estimate: 10.3 AF (\$8,750/AF)
- Non-potable supply

Purchase & Sale Overview

- Similar arrangement as 3 GIC shares purchased in March 2019
 - Peckham contracted shares for dedication toward 2" tap to Airgas
 - Airgas site not historically irrigated by GIC; therefore, cannot accept GIC dedication, tap paid by cash-in-lieu
- Peckham selling shares to City at or below Peckham's cost

Dry-Up Assignments

- **2.34 acres:** assignment of dry-up due to urbanization as determined in Case Nos. 96CW658 & 11CW20
- **1.53 acres:** assignment of certain Smith dry-up allocation via 2013 agreement between Greeley, Central, Smith, and others
- **2.87 acres:** new dry-up covenant on Smith property
- **6.74 acres total**



Due Diligence & Path Forward

- Closing by May 10, 2019
- Diligence largely complete (required upfront for Peckham to close)
- Remaining diligence – title review, dry-up inspection, etc.
- Brokerage fee included in purchase price

Recommendation

W&S staff recommend the acquisition of the Peckham share in accordance with the water acquisition strategies set forth in the Department's Master Plan and Future Water Account Plan

PURCHASE AND SALE AGREEMENT FOR WATER RIGHTS
(Peckham Development Corporation II)

Date: 4.11.19

1. **AGREEMENT.** Buyer agrees to buy and Seller agrees to sell the Property, defined below, on the terms and conditions set forth in this Agreement.

2. **DEFINED TERMS.**

a. **Buyer.** The City of Greeley, a Colorado home rule municipal corporation.

b. **Seller.** Peckham Development Corporation, a Colorado corporation.

c. **Water Rights.** The Water Rights are described as follows:

all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by 1 share of stock in the Greeley Irrigation Company (currently represented by Certificate No. 3394 (1 of the 3.25 shares), which historically irrigated the real property described on Exhibit A attached hereto. The Water Rights also include any and all interest of the Seller in any lateral ditches, easements, rights of way, and other rights or entitlements appurtenant to or used in connection with the Water Rights. The Water Rights do not include any interest in wells, well rights, or well permits, whether tributary, nontributary or not nontributary.

d. **Land and Assignment of Dry-Up.** Seller does not own the real property historically irrigated by the Water Rights, which parcel is identified as E-89a in the decree entered in Case No. 96CW658 ("Poudre Prairie Decree") and is more particularly described on Exhibit A ("Land"). Conditioned on closing of the transaction contemplated under Seller's Purchase Contract (described below), Seller agrees to assign to the Buyer (i) its interest in that certain dry-up covenant burdening 2.87 acres of the E-89a parcel ("Smith Dry-Up Covenant"), and (ii) its interest in that certain Agreement for Allocation of Dry-Up Acreage, dated October 11, 2013, recorded in Weld County at Reception No. 3998787, and attached hereto as Exhibit B.

e. **Property.** The Property consists of the Water Rights, the Seller's interest in the Smith Dry-Up Covenant, and the Seller's interest in the Agreement for Allocation of Dry-Up Acreage.

f. **Company.** The Greeley Irrigation Company.

g. **Dates and Deadlines.** The abbreviation "MEC" (mutual execution of Agreement) means the latest date upon which Seller and the Director of the Greeley Water and Sewer Department have signed this Agreement. MEC does not refer to nor constitute Agreement formation, and is solely used for calculating the dates and deadlines in the table below. As described in Sections 23 and 24 below, the obligations of the Buyer under this Agreement are expressly subject to approval of this Agreement by the Greeley Water and Sewer Board.

Item No.	Reference	Event	Date or Deadline
1	§3a	Earnest Money Deadline	5 days after MEC
1	§5b	Off-Record Matters Deadline	5 days after MEC
2	§5a	Title Objection Deadline	April 26, 2019
3	§5b	Off-Record Matters Objection Deadline	April 26, 2019
4	§6c	Inspection Objection Deadline	April 26, 2019
5	§6d	Resolution Deadline	May 3, 2019
6	§8	Closing Date	May 10, 2019
7	§13	Possession Date	Closing Date
8	§13	Possession Time	Completion of Closing

h. Attachments. The following exhibits, attachments and addenda are a part of this Agreement: Exhibit A, Legal Description of Land; Exhibit B, Agreement for Allocation of Dry-Up Acreage.

3. PURCHASE PRICE AND TERMS. The total Purchase Price for the Property is ninety thousand, one hundred and sixty-eight dollars and zero cents (\$90,168.00), of which \$80,000.00 is attributable to the Water Rights, and \$10,168.00 is attributable to costs incurred by the Seller that the Buyer has agreed to reimburse, contingent on and subject to the closing of this transaction. The Purchase Price is payable by the Buyer as follows:

a. Buyer shall pay a portion of the Purchase Price prior to Closing to memorialize its intent to purchase the Property ("Earnest Money"). Buyer shall remit the Earnest Money, in the amount of five thousand dollars and zero cents (\$5,000.00), to Unified Title Company, located at 1275 58th Avenue, Unit C, Greeley, Colorado 80634 ("Title Company"), within five days after MEC. If Unified Title Company cannot perform the services contemplated by this Agreement, the Parties may substitute another title company by mutual agreement. The Title Company shall hold the Earnest Money deposit in its trust account and credit the Earnest Money deposit against the Purchase Price to be paid by the Buyer at Closing, in the event that Closing occurs. The Earnest Money is refundable to the Buyer at any time prior to the expiration of the Title Objection, Off-Record Matters Objection, or Inspection Objection Deadlines if the Buyer is not satisfied with the Property. The Earnest Money is also refundable to the Buyer in the event Buyer terminates this Agreement pursuant to Section 5, 6, 17, or 18. Except as explicitly set forth in this Agreement, the Buyer is not entitled to a refund of the Earnest Money.

b. The Buyer shall pay to the Seller at Closing the Purchase Price, less the Earnest Money, by cashier's check, wire transfer, or other immediately available funds. The Buyer shall also pay any fees or other amounts reasonably required by the Title Company at Closing, as those amounts are prorated in accordance with this Agreement.

c. All financial obligations of the Buyer arising under this Agreement that are payable after the current fiscal year are expressly contingent upon the Greeley City Council appropriating, budgeting, or otherwise making funds available for the purposes of this Agreement.

4. EVIDENCE OF TITLE.

a. **Evidence of Title.** Buyer may, in its discretion and at its expense, obtain a current commitment for an owner's title insurance policy covering the Land, in an amount equal to the Purchase Price, setting forth ownership, lienholders and any restrictions. The purpose of the title commitment is to enable Buyer to conduct the title review described in Section 5 and said commitment shall be updated as necessary up to the Closing. Neither Seller nor Buyer shall have any obligation under this Agreement to purchase the title insurance policy after Closing, though Buyer may elect to acquire this insurance at its expense.

b. **Copies of Exceptions.** Buyer may, in its discretion and at its expense, obtain copies of: (i) any plats, declarations, covenants, conditions and restrictions burdening the Land and Water Rights, and (ii) any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions ("Exceptions"). The title insurance commitment and any copies or summaries of such documents furnished pursuant to this Section constitute the title documents ("Title Documents").

5. TITLE.

a. **Title Review.** Buyer shall have the right to inspect the Title Documents. Buyer shall give written notice of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents that, in the Buyer's discretion, may prevent the Buyer from receiving the Property, to the Seller on or before the Title Objection Deadline, or within five days after receipt by the Buyer of any Title Documents or endorsements adding new Exceptions to the title commitment together with a copy of the Title Document adding new Exceptions to title. If Seller does not receive Buyer's notice by the applicable date specified above, the Buyer is presumed to have accepted the condition of title disclosed by the Title Documents as satisfactory. If Buyer does send a notice of title objection, Buyer shall include all relevant Title Documents.

b. **Matters not Shown by the Public Records.** Seller shall deliver to Buyer, on or before the Off-Record Matters Deadline, true copies of all leases, surveys and other agreements in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect such materials to determine if any third parties have any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Buyer shall sign and give written notice of any unsatisfactory conditions disclosed by the Seller or revealed by such inspection to the Seller on or before the Off-Record Matters Objection Deadline. If the Seller does not receive Buyer's notice by said date, Buyer accepts title subject to the rights of third parties, if any, of which Buyer has actual knowledge.

c. **Right to Cure.** If the Seller receives notice of unmerchantability of title or any other unsatisfactory title conditions or commitment terms as provided in Sections 5(a) or 5(b), the Seller may use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to the Resolution Deadline. If any such unsatisfactory title conditions are not corrected on or before the Resolution Deadline, this Agreement shall then terminate one (1) day after the Resolution Deadline, unless before such termination the Seller receives Buyer's written withdrawal of the Notice to Correct.

6. PROPERTY DISCLOSURE AND INSPECTION.

a. **Additional Documents to be Provided by Seller.** Supplementing the provisions of Section 5, the Seller shall deliver the following items to Buyer on or before the Off-Record Matters Deadline, to the extent they exist and are in Seller's possession or control:

(i) Copies of any documents that relate to the title, use, quantity, quality and condition of the Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, testing reports and records maintained by the Company concerning the Water Rights, including without limitation share certificate records, delivery records and assessment records (or, in the alternative, the Seller shall obtain for Buyer the right to inspect and copy such Company records); and

(ii) Copies of all leases or other agreements relating to the operation, maintenance or leasing of the Property and any portion thereof.

b. Right to Inspect.

(i) Buyer, at its sole cost and expense, shall have the right to perform any such tests, investigations, or inspections as Buyer deems desirable to evaluate the Water Rights and the condition and uses of the Land. Such tests, investigations, or inspections shall be conducted in a manner to minimize or avoid any disruption to the Land. Buyer acknowledges that Seller does not have control of the Land or authority to grant Buyer access to the Land.

(ii) Buyer and its employees, contractors and attorneys shall have the opportunity to interview the Seller, and its employees, agents, or other representatives to assist the Buyer in evaluating the historical use of the Water Rights. Seller agrees to make reasonable good faith efforts cooperate with Buyer in facilitating such interviews and obtaining affidavits regarding historical use of the Water Rights. Buyer and its employees, contractors and attorneys may also meet with the officers, directors, attorneys and shareholders of the Company to determine under what conditions the Company will approve a change in the place of delivery or use, or the point of diversion, of the Water Rights and other Company shares obtained or to be obtained by Buyer, pursuant to the bylaws of the Company or other applicable law.

c. **Inspection Objection Deadline.** If Buyer is dissatisfied in any respect with the results of its investigations and its review of the information described in this Section 6 for any reason whatsoever, including but not limited to the Buyer's determination in its subjective discretion that the Seller's interests in the Smith Dry-Up Covenant and the Agreement for Allocation of Dry-Up will not be sufficient to support a future change of the Water Rights, Buyer

may, on or before the Inspection Objection Deadline, (i) notify Seller in writing that this Agreement is terminated or (ii) provide Seller with a written description of any unsatisfactory condition which Buyer requires Seller to correct ("Notice to Correct"). If a Notice to Correct is not received by Seller on or before Inspection Objection Deadline, the condition of the Property shall be deemed to be satisfactory to Buyer. If Seller fails to timely provide Buyer with copies of any of the documents or information set forth above in this Section, upon written notice from Buyer the Inspection Objection Deadline and Resolution Deadline may be extended by the number of days equal to the delay in delivery of such documents beyond the original deadline.

d. Resolution Deadline. If a Notice to Correct is received by Seller, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before the Resolution Deadline, this Agreement shall terminate one (1) day after the Resolution Deadline, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

e. Damage; Liens. Buyer is responsible for payment of all inspections, surveys, engineering reports and any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, engineering reports and for any other work performed on the Property at Buyer's request. The provisions of this Subsection shall survive the termination of this Agreement.

7. EXTENSION OF DEADLINES BY BUYER. [intentionally omitted]

8. CLOSING. The Buyer and Seller shall each deliver all closing documents and other items required to be delivered, as described in Section 14 below, to the Title Company on the Closing Date ("Closing"). Closing shall be on the date set forth in Section 2 above as the Closing Date or on another date by mutual agreement of the Buyer and Seller. The hour and place of Closing shall also be as designated by mutual agreement of the Buyer and Seller, or absent such agreement at 10:00AM at the offices of the Title Company. Notwithstanding the foregoing, Seller shall be entitled to extend the Closing Date by up to 14 days upon written notice provided prior to the Closing Date set forth in Section 2 above.

9. TRANSFER OF TITLE. Subject to the tender of payment at Closing as required above and compliance by the Buyer with the other terms and provisions of this Agreement, Seller shall execute and deliver at Closing: (i) a Special Warranty Deed for the Water Rights ("Water Rights Deed"), (ii) an assignment of the Seller's interest in the Smith Dry-Up Covenant, (iii) an assignment of the Seller's interest in the Agreement for Allocation of Dry-Up Acreage, (iv) a partial assignment of the Greeley Irrigation Company stock certificate that represents the Water Rights, in a form and manner acceptable to the Company ("Water Rights Assignment"); and (iv) the original Greeley Irrigation Company stock certificate for the share described in Section 2(c) above, or the successor certificate for said share. Buyer acknowledges and agrees that Seller is purchasing the Water Rights from a third party pursuant to a separate purchase agreement ("Seller's Purchase Contract") shortly before the Closing and accordingly, Buyer agrees that Seller may deliver the initial certificate No. 3394 (the "Initial Certificate") issued in the name of Seller's predecessor-in-title James R. Smith ("Smith") and the assignment from such predecessor to Seller along with the Water Rights Assignment. If Seller does deliver the Initial Certificate, the parties

shall mutually coordinate the delivery of the Initial Certificate and the applicable share assignments to the Company for issuance of two new certificates, one in the name of Buyer for the 1 share representing the Water Rights and another for the remaining 2.25 shares in the name of Smith (the "Remainder Share") and Buyer shall cause the Remainder Share to be returned to Seller, or at Seller's direction, to Smith. The obligations of the preceding sentence shall survive Closing.

10. PAYMENT OF ENCUMBRANCES. Any encumbrance against the Water Rights, shall be paid at or before Closing from the proceeds of this transaction or from any other source of the Seller.

11. CLOSING COSTS; DOCUMENTS AND SERVICES. Buyer and Seller shall pay their respective Closing costs, and any other items reasonably required to be paid at Closing, in good funds, except as otherwise provided herein. Buyer and Seller shall sign and complete all documents customary or reasonably required by the Title Company at or before Closing. Fees for real estate closing services due to the Title Company are to be allocated equally at Closing; one-half (½) to be paid by the Buyer and one-half (½) to be paid by the Seller. Buyer shall pay any transfer fees due to the Company for the assignment of the Water Rights, and any documentary fees due in connection with the recording of the documents delivered at Closing.

12. PRORATIONS. To the current knowledge of the Buyer and Seller, there are no items associated with this transaction that will require a proration to the Closing Date.

13. POSSESSION. The Seller shall deliver possession of the Water Rights to the Buyer on Possession Date and Possession Time. If Seller, after the Possession Date and Possession Time, fails to deliver possession as specified, Seller is subject to eviction and additionally liable to the Buyer for payment of five hundred dollars and zero cents (\$500.00) per day from the Possession Date until possession is delivered. Buyer acknowledges that delivery of the Closing documents provided for in Section 9 above constitutes delivery of possession.

14. OBLIGATIONS AT CLOSING. The following shall occur at Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

a. Seller shall execute, have acknowledged, and deliver to the Buyer a good and sufficient Water Rights Deed, and any other documents necessary to transfer the Water Rights to the Buyer, including an assignment of its Greeley Irrigation Company stock certificates that represent the Water Rights, in a form and manner acceptable to the Company.

b. Seller shall execute, have acknowledged, and deliver to the Buyer a valid assignment of its interest in the Smith Dry-Up Covenant.

c. Seller shall execute, have acknowledged, and deliver to the Buyer a valid assignment of its interest in the Agreement for Allocation of Dry-Up Acreage.

d. Seller shall execute and deliver to Buyer an affidavit stating that Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

e. Seller shall execute a Certificate as to Taxpayer Identification Number, as required by law.

f. Seller shall deliver to Buyer possession of the Water Rights, the original Greeley Irrigation Company stock certificate for the share described in Section 2(c) above as provided for in Section 9 above.

g. The Buyer and Seller shall each execute and deliver their respective settlement statements, showing adjustments and the payment of costs of the Closing.

h. Each party shall deliver any other documents, certificates, or materials that may be required, necessary, or helpful to carry out its obligations under this Agreement.

15. NOT ASSIGNABLE. Except as otherwise explicitly provided herein, this Agreement is not assignable by either the Buyer or the Seller, and any purported assignments are void. Except as so restricted, this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, and successors of the parties.

16. RECOMMENDATION OF LEGAL AND TAX COUNSEL. BY SIGNING THIS DOCUMENT, BUYER AND SELLER ACKNOWLEDGE THAT THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES AND IT IS RECOMMENDED THAT THEY CONSULT WITH LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING THIS AGREEMENT.

17. TIME OF ESSENCE AND REMEDIES. Time is of the essence. In the event that any deadline under this Agreement falls on a Saturday, Sunday or legal holiday of the State of Colorado, the date of performance shall be the next day which is not a Saturday, Sunday or legal holiday of the State of Colorado. If any note or check, received as Earnest Money or as any other payment due under this Agreement, is not paid, honored or tendered when due, or if any other obligation under this Agreement is not performed or properly waived, the Buyer and Seller are entitled to the following remedies:

a. **If Buyer is in Default:** All payments and things of value received under this Agreement shall be forfeited by Buyer and retained by the Seller. Both parties are thereafter released from all obligations under this Agreement. It is agreed that such payments and things of value are LIQUIDATED DAMAGES and (except as provided below in Section 17(c)) are SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Agreement. Seller expressly waives the remedies of specific performance and additional damages.

b. **If Seller is in Default:** Buyer may (i) treat this Agreement as cancelled, in which case all payments and things of value received under this Agreement shall be returned and Buyer may recover such damages as may be proper, or (ii) treat this Agreement as being in full force and effect and Buyer shall have the right to specific performance, damages, or both. Notwithstanding anything to the contrary herein, Buyer acknowledges that Seller's performance is contingent on and subject to the closing of the transaction contemplated under the Seller's

Purchase Contract and Buyer agrees that if that transaction fails to close, then Buyer shall not be entitled to the remedies provided under clause (ii) of this Section 17(b).

c. **Costs and Expenses.** In the event of any arbitration or litigation arising from this Agreement, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney's fees.

18. TERMINATION. In the event this Agreement is terminated by either the Buyer or Seller, all payments and things of value received shall be returned and the parties shall be relieved of all further obligations, except as otherwise provided herein.

19. ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL. This Agreement constitutes the entire understanding between the parties relating to the subject matter herein, and any prior agreements, whether oral or written, have been integrated into this Agreement. No modification of any of the terms of this Agreement is valid, binding, or enforceable unless made in a writing duly authorized and executed by the Buyer and Seller. Any obligation in this Agreement which, by its terms, is intended to be performed after termination or Closing shall survive the same.

20. SIGNATURES. Signatures may be evidenced by copies transmitted via electronic mail. Documents with original signatures shall be provided to the other party upon written request.

21. NOTICE. Any notice or other communication given by the Parties to this Agreement must be in writing, and is deemed properly 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 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 (iii) on the date and at the time shown on the electronic mail (email) if emailed to the addresses specified below and delivery or receipt of such email is confirmed; or (iv) on the date shown on the delivery acknowledgment if sent by a nationally recognized overnight courier service (such as UPS or Federal Express):

If to Seller to: Peckham Development Corporation
Attn: Mark Goldstein
P.O. Box 273180
Fort Collins, Colorado 80527
Telephone: (970) 353-1667
Email: mark@geiresources.com

With copy to: Andrew L. Meyers
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202
Telephone: (303) 223-1193
Email: ameyers@BHFS.com

If to Buyer, to: Greeley Water and Sewer Department
Attn: Adam Jokerst, Deputy Director of Water Resources
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
Telephone: 970-350-9815
Email: adam.jokerst@greeleygov.com

With copy to: Greeley City Attorney's Office
Attn: Environmental & Water Resources Practice Group
1100 10th Street, Suite 401
Greeley, Colorado 80631
Telephone: 970-350-9757
Email: daniel.biwer@greeleygov.com

22. BROKERAGE COMMISSIONS. Neither the Buyer nor the Seller has engaged any real estate brokers in connection with this transaction. No brokerage commissions are payable by either the Buyer or the Seller in connection with the closing of this purchase, and the Seller specifically disclaims any obligation to pay any such commission. Seller agrees to indemnify and hold the Buyer harmless from and against any and all costs, expenses, claims, losses, or damages, including reasonable attorneys' fees, resulting from or arising out of any claim for brokerage commissions incurred or made through the Seller.

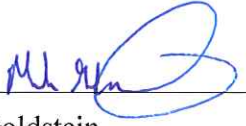
23. WATER AND SEWER BOARD APPROVAL REQUIRED. THE OBLIGATIONS OF THE BUYER ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD. THE BUYER SHALL EVIDENCE SUCH APPROVAL BY EXECUTION OF ITS SIGNATURE PAGE BELOW.

24. NOTICE OF ACCEPTANCE; COUNTERPARTS. Acceptance of the terms of this Agreement must be made in writing by the Seller, as evidenced by signature below. If so accepted by the Seller and subsequently executed by the Buyer, to include execution of the supplemental signature page, this document shall become a binding contract between the Buyer and Seller. The obligations of the Buyer are expressly contingent upon the approval of this Agreement by the City of Greeley Water and Sewer Board. The Buyer shall evidence such approval by execution of its supplemental signature block below. A copy of this document may be executed separately by each party, and when each party has executed a copy, such copies taken together may be deemed to be a full and complete contract between the Parties.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

SELLER

PECKHAM DEVELOPMENT CORPORATION,
A Colorado corporation

By: 
Mark Goldstein

Date: 12.11.19

BUYER

CITY OF GREELEY, a Colorado home rule municipal corporation
acting by and through its Water and Sewer Board

By: _____
Director of Water & Sewer

Date: _____

**THE FOLLOWING IS TO BE EXECUTED BY THE BUYER UPON AUTHORIZATION
OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD
IN ACCORDANCE WITH SECTIONS 23 AND 24 ABOVE.**

**CITY OF GREELEY
SUPPLEMENTAL SIGNATURE PAGE**

AS TO SUBSTANCE:

AS TO LEGAL FORM:

By: _____
City Manager

By: _____
City Attorney

AS TO AVAILABILITY OF FUNDS:

By: _____
Director of Finance

Date: _____

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 10

TITLE: ADOPT RESOLUTION REGARDING WATER
RESTRICTIONS FOR CUSTOMERS ON
WATER BUDGET RATES

RECOMMENDATION: ADOPT RESOLUTION REGARDING WATER
RESTRICTIONS FOR CUSTOMERS ON
WATER BUDGET RATES

ADDITIONAL INFORMATION:

To coincide with the implementation of a water budget rate structure, as further discussed Agenda Item 12, Presentation of 2020 Preliminary Budget, the Water and Sewer Board recommended in 2017 and 2018 that the City Council remove the three-day-per-week watering restrictions appropriate to an adequate water supply, as defined by Section 14.08.290(c)(1) of the Code, for single family residential customers on water budget rates. The modification allowed these customers an increased flexibility to water their properties in response to changing weather patterns, and staff did not observe a resulting increase in wasteful use. Staff is developing Code revisions to implement this change permanently, but they will not be ready in advance of the 2019 irrigation season.

The enclosed resolution is a recommendation of the Water and Sewer Board that the City Council once again remove the three-day-per-week watering restrictions for the duration of the 2019 irrigation season for inside the City single-family residential customers who are on water budget rates, to allow staff and counsel time to finalize the necessary Code revisions to make this change permanent.

**CITY OF GREELEY, COLORADO
ACTING BY AND THROUGH ITS WATER AND SEWER BOARD**

RESOLUTION __, 2019

**A RESOLUTION REGARDING WATERING RESTRICTIONS FOR INSIDE THE CITY
SINGLE-FAMILY RESIDENTIAL CUSTOMERS ON WATER BUDGET RATES**

WHEREAS, the City of Greeley (“City”) is a Colorado home rule municipality empowered pursuant to Sections 1 and 6 of Article XX of the Colorado Constitution to, *inter alia*, construct, purchase, acquire, lease, add to, maintain, conduct, and operate water works and everything required therefor, within or without its territorial limits, for use of the City; and

WHEREAS, Section 17-4 of the City Charter authorizes and requires the Water and Sewer Board (“Board”) to acquire, develop, convey, lease, and protect water and sewer assets, supplies, and facilities; and

WHEREAS, Section 14.08.290 of the Greeley Municipal Code prescribes the particular means by which City residents may irrigate their property during periods of adequate water supply and during periods of drought; and

WHEREAS, Section 14.08.290(c) of the Greeley Municipal Code permits the Greeley City Council to declare a set of watering restrictions for the City by resolution, based on the water supply adequacy determination made by the Board; and

WHEREAS, the City Council declared watering restrictions appropriate to an adequate water supply, as described in Section 14.08.290(c)(1), to be in effect via Resolution 15, 2005, which was passed and adopted on April 5, 2005; and

WHEREAS, such watering restrictions appropriate to an adequate water supply are still currently in effect for all City residents; and

WHEREAS, Sections 14.08.290(b)(4) and 14.08.290(c)(1) prescribe a watering schedule of three days per week for private residences and other properties between April 15 and the end of the irrigation season during a period of adequate water supply; and

WHEREAS, the current water budget rate structure for inside the City single-family residential customers was originally implemented by the Board, via the Resolution Approving Water and Sewer Rates for 2017 approved at its December 21, 2016 regular board meeting; and

WHEREAS, in conjunction with the implementation of this water budget rate structure, and upon the recommendation of the Board, City Council removed the three-day-per-week watering restrictions for single-family residential customers on water budget rates for the duration of the 2017 and 2018 irrigation seasons; and

WHEREAS, the previous two irrigation seasons have demonstrated that inside the City single-family residential customers on water budget rates can utilize this flexibility during periods of adequate water supply to water their properties in response to varying weather and precipitation patterns without committing waste; and

WHEREAS, City staff and legal counsel are accordingly developing revisions to the Greeley Municipal Code to update the City's watering restrictions and drought response mechanisms, which Code revisions will, in part, implement this change on a permanent basis; and

WHEREAS, the imposition of watering restrictions that are responsive to the adequacy of available water supply continues to be in the best interests of the citizens of the City of Greeley for the preservation and protection of their health, property, water resources, and safety;

NOW THEREFORE, BE IT RESOLVED BY THE WATER AND SEWER BOARD OF THE CITY OF GREELEY, COLORADO, AS FOLLOWS.

1. The Board recommends to the City Council that it modify the three-day-per-week watering restrictions currently in place during this period of adequate water supply, which restrictions are described with more particularity in Sections 14.08.290(b)(4) and 14.08.290(c)(1) of the Greeley Municipal Code and in City of Greeley Resolution 15, 2005.

2. The Board recommends that the aforementioned three-day-per-week watering restrictions be removed for the duration of the 2019 irrigation season for inside the City single-family residential customers who are on water budget rates.

3. The Board recommends that City staff continue development of revisions to the Greeley Municipal Code to implement this change to watering restrictions on a permanent basis.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF APRIL 2019.

ATTEST

CITY OF GREELEY
WATER AND SEWER BOARD

Roy Otto
Secretary to the Board

Harold Evans
Chairman, Water and Sewer Board

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 11

TITLE: APRIL WATER SUPPLY UPDATE AND
DECLARATION OF ADEQUATE WATER
YEAR

RECOMMENDATION: APRIL WATER SUPPLY UPDATE AND
DECLARATION OF ADEQUATE WATER
YEAR

ADDITIONAL INFORMATION:

Staff reports to the Water and Sewer Board (“Board”) in April, July, and November of each year on Greeley’s water supply status. In April, the Board makes a declaration concerning the adequacy of the Water Year. Projected storage is presently at 29,054 acre-feet exceeding the target storage volume of 20,000 acre-feet.

Based on projected storage, staff recommends that the Board declare an “Adequate Water Year,” with the normal three days a week watering schedule and authorize staff to rent out available excess water supply, so long as the target storage volume of 20,000 acre-feet is maintained.

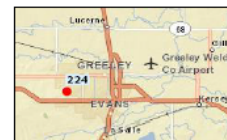
Water Supply Update

April 17, 2019

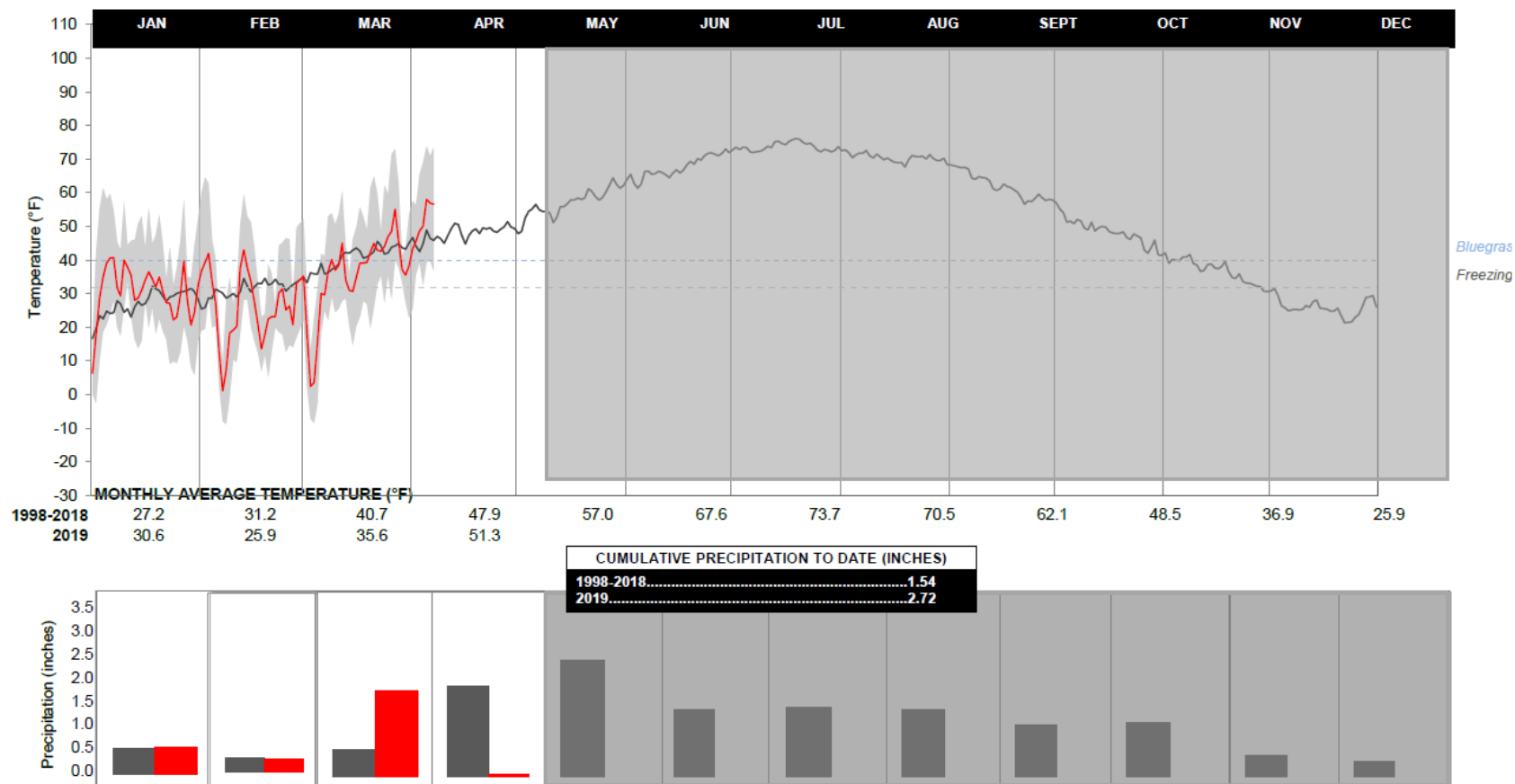
Water & Sewer Board

City of Greeley: Temperature (°F) and Precipitation 1998-2018

- 1998-2018 Average Temperature
- 2019 Average Daily Temperature
- 2019 Daily Temperature Range
- R Record monthly high (1998-2018)



Greeley West station (224)
Source: northernwater.org



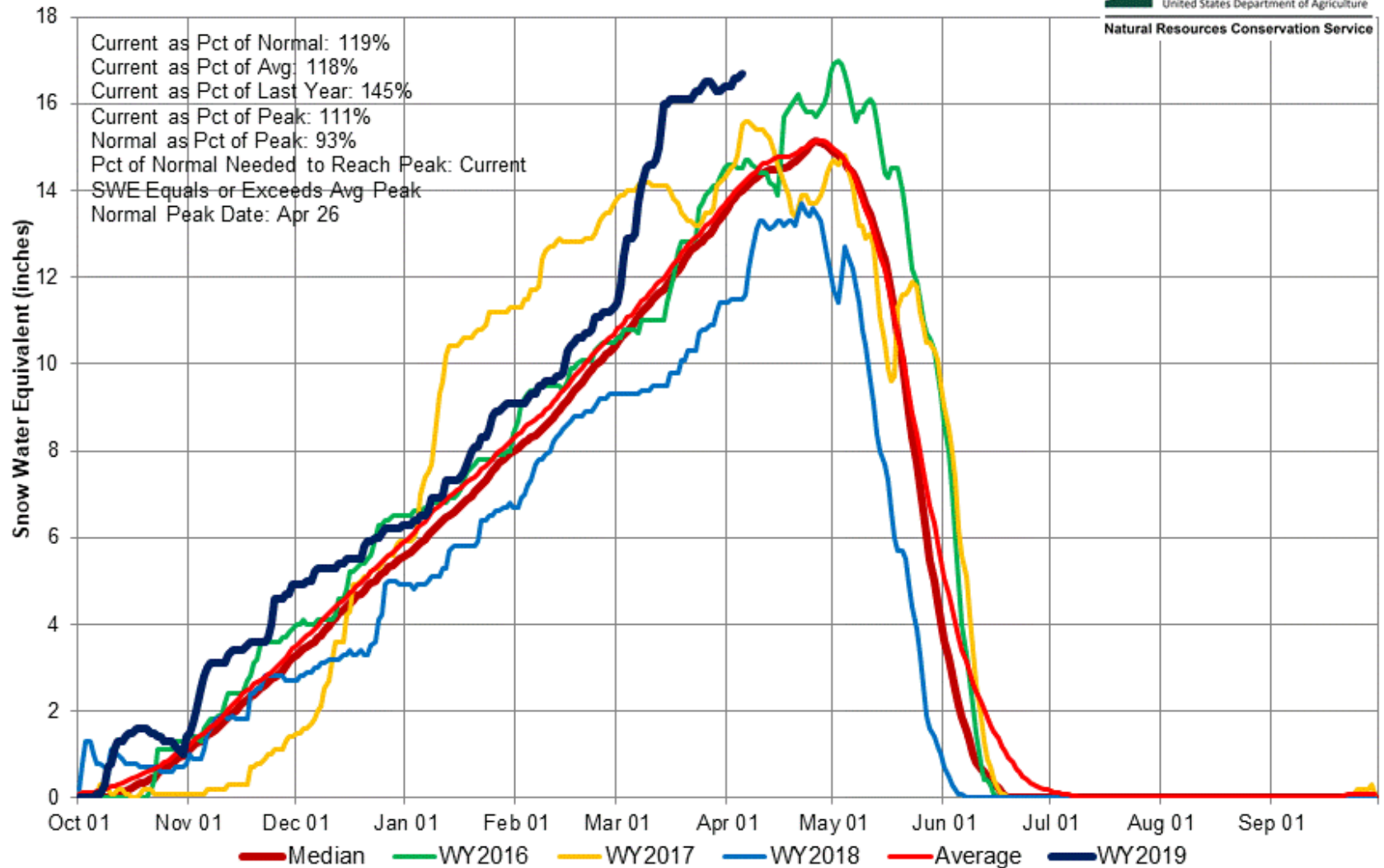
South Platte River Basin Time Series Snowpack Summary

Based on Provisional SNOTEL data as of Apr 05, 2019



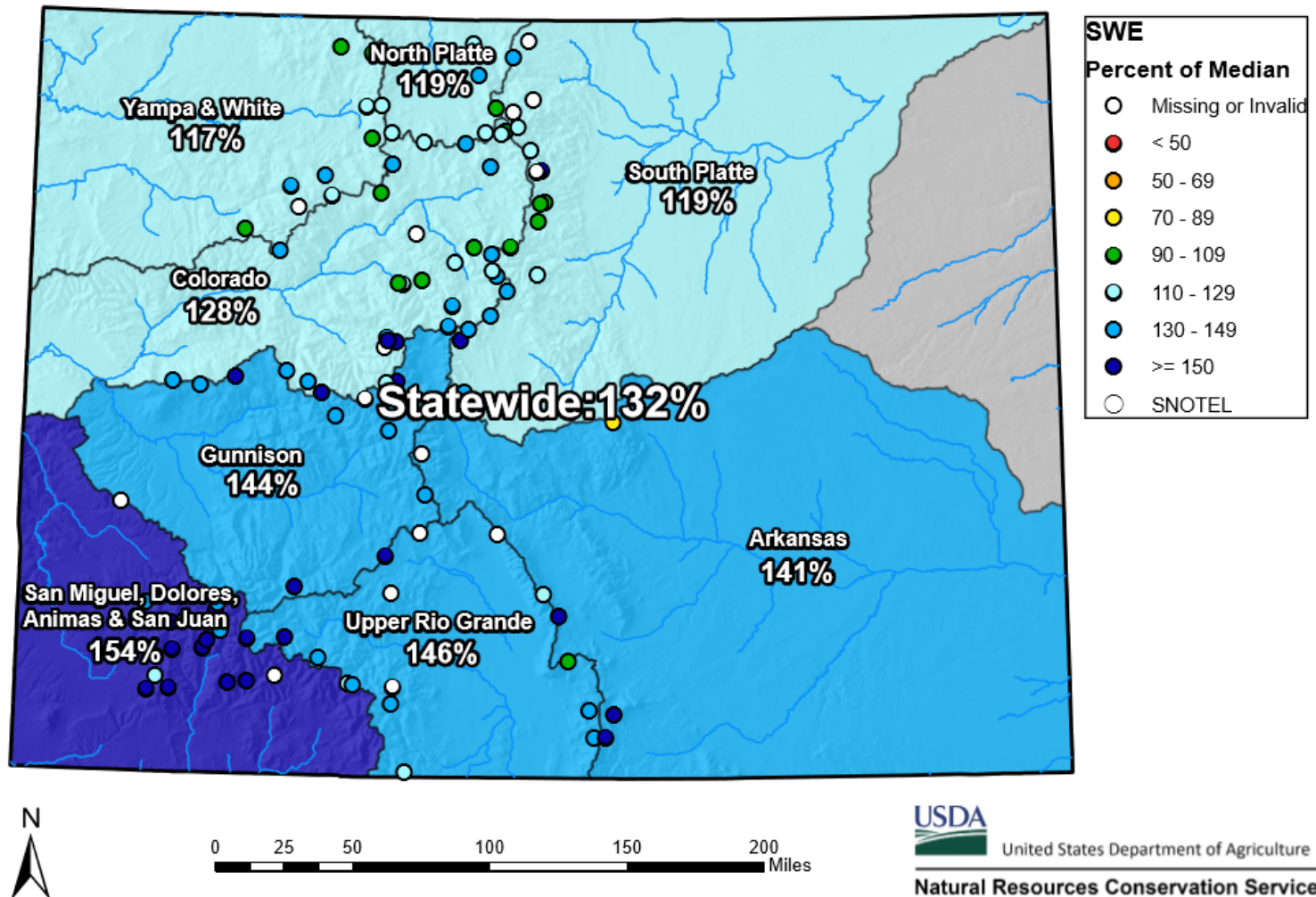
United States Department of Agriculture

Natural Resources Conservation Service



Colorado SNOTEL Snow Water Equivalent (SWE) Update Map with Site Data

Current as of Apr 05, 2019



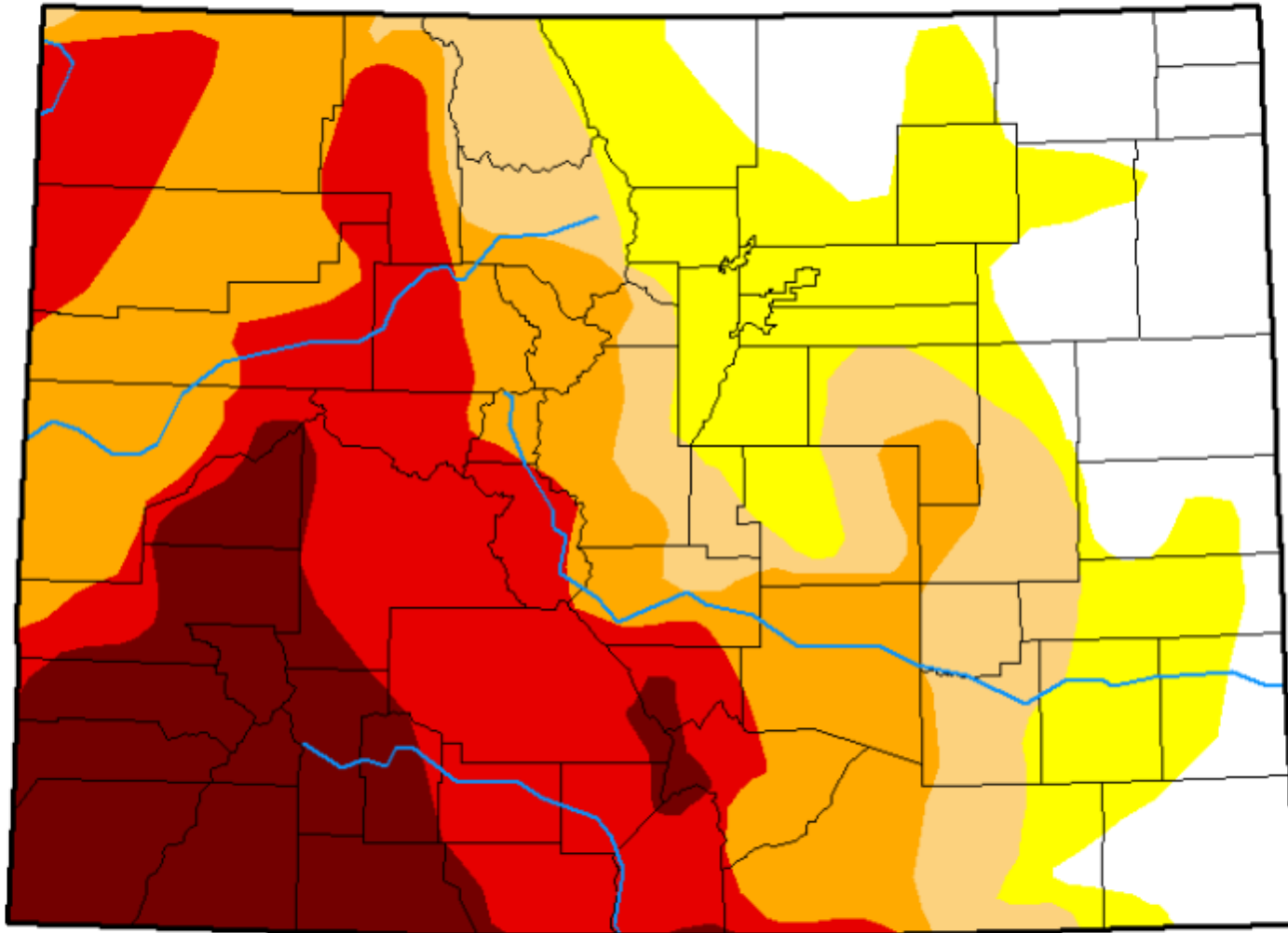
**Apr-Jul Maximum, Minimum
and Most Probable Streamflow Forecasts (1000 af)**

Watershed	Forecast Minimum	Most Probable	Forecast Maximum	Apr-Jul Avg ⁽³⁾	Most Prob % Average
Blue River	299	364	429	275	132%
Upper Colorado River	186	240	294	220	109%
Willow Creek	44	61	77	47	130%
Fraser River	101	131	161	117	112%
Poudre River	164	240	330	225	107%
Big Thompson River	63	93	137	90	103%
St. Vrain River	62	93	139	88	106%
Boulder Creek	40	55	75	54	102%
South Platte Tributaries	--	481	--	457	105%

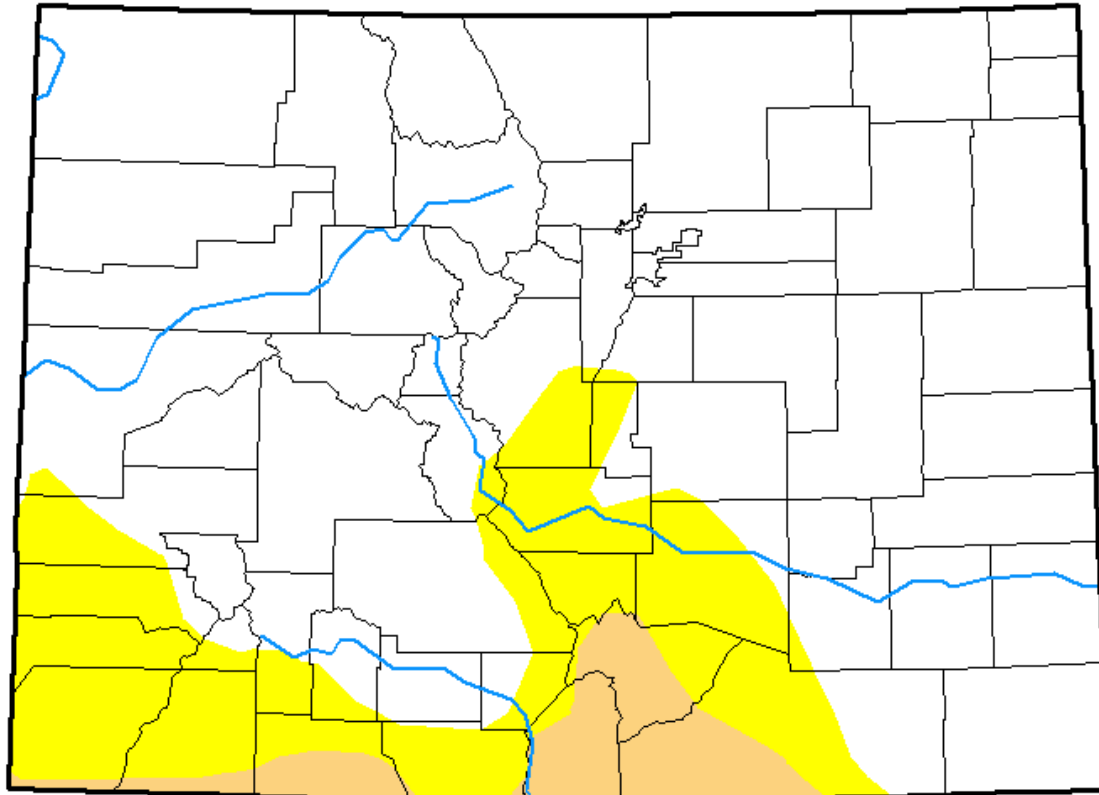
Source: Northern Water April 2019 Streamflow forecast

Drought Monitor

November 2018



Drought Monitor



Intensity:

- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

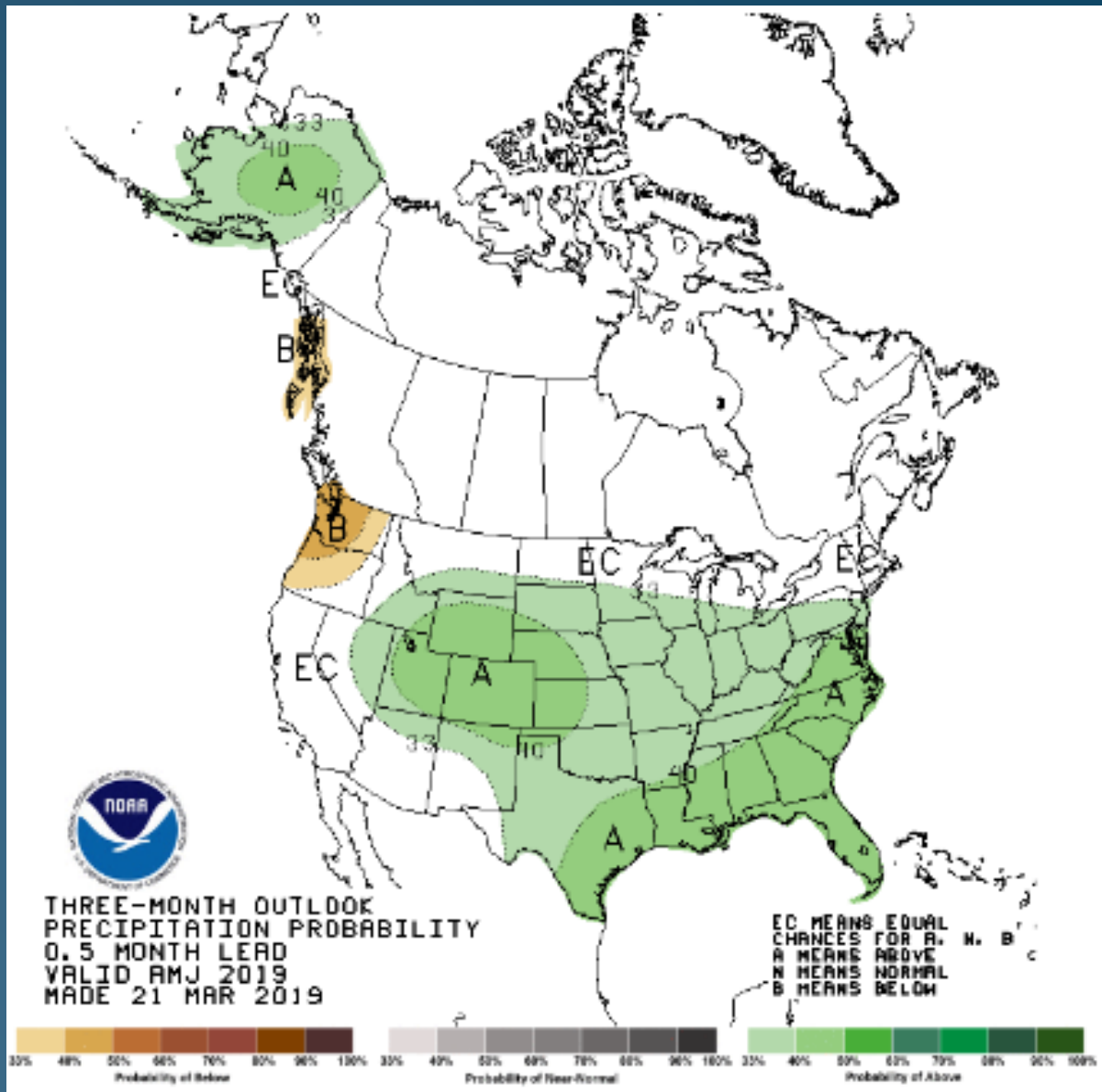
The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

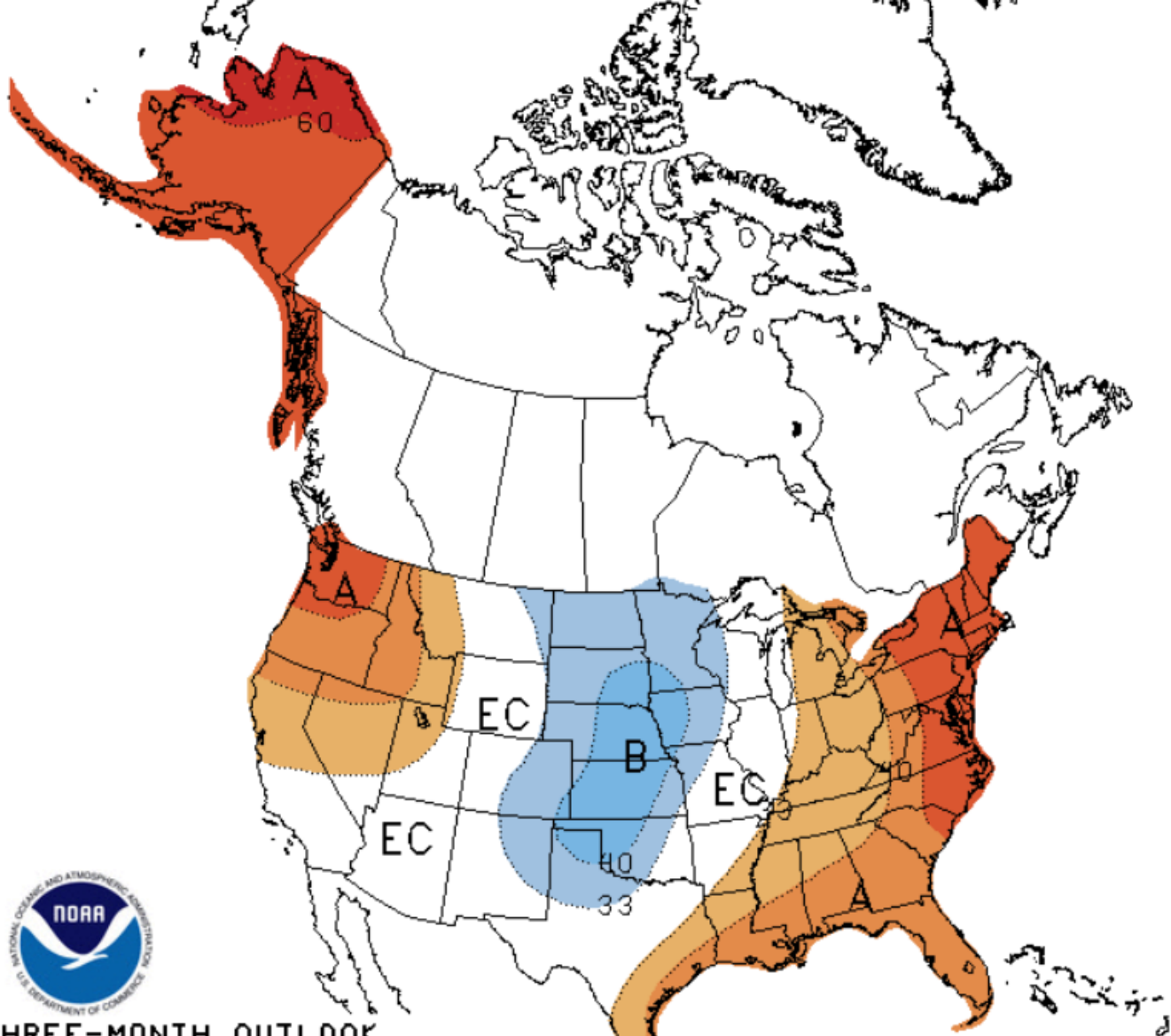
Author:

Curtis Riganti
National Drought Mitigation Center



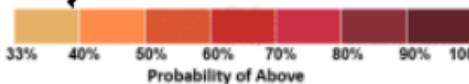
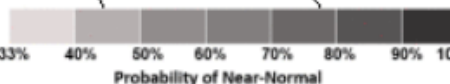
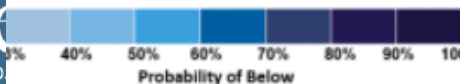
<http://droughtmonitor.unl.edu/>





THREE-MONTH OUTLOOK
TEMPERATURE PROBABILITY
0.5 MONTH LEAD
VALID AMJ 2019
MADE 21 MAR 2019

EC MEANS EQUAL
CHANCES FOR A, N, B
A MEANS ABOVE
N MEANS NORMAL
B MEANS BELOW



Assumptions for 2019

- Existing Greeley storage carryover – 28K AF
- 70% quota from Northern (issued Apr 11)
- GLIC dividends below average
- Water demand similar to 2012
- No pumping of Windy Gap water (collateralized C-BT)

Greeley System Storage Analysis

2019 Water Supply
Update

C-BT=80% HMR* = 0 AF
Yields GL/LL/7L = 11/40/20

Water Year 2019 Operations

	Beginning Storage (1)	Estimated Yield (2)	Total Supplies (3)	Total WY 2019 Demands (4)	Early Season Spills and Collateralized (5)
				(4)	
NCWCD (C-BT)	5,821	14,886	20,707	(8,062)	(307)
WINDY GAP	0	916	1,565	(1,806)	1,872
POUDRE SYSTEM	4,866	8,602	13,468	(9,555)	0
GLIC SYSTEM	17,256	8,855	26,111	(11,269)	0
TOTAL	27,943	33,259	61,202	(30,692)	1,565
Balance					32,075

Water Year 2020 Storage Volume

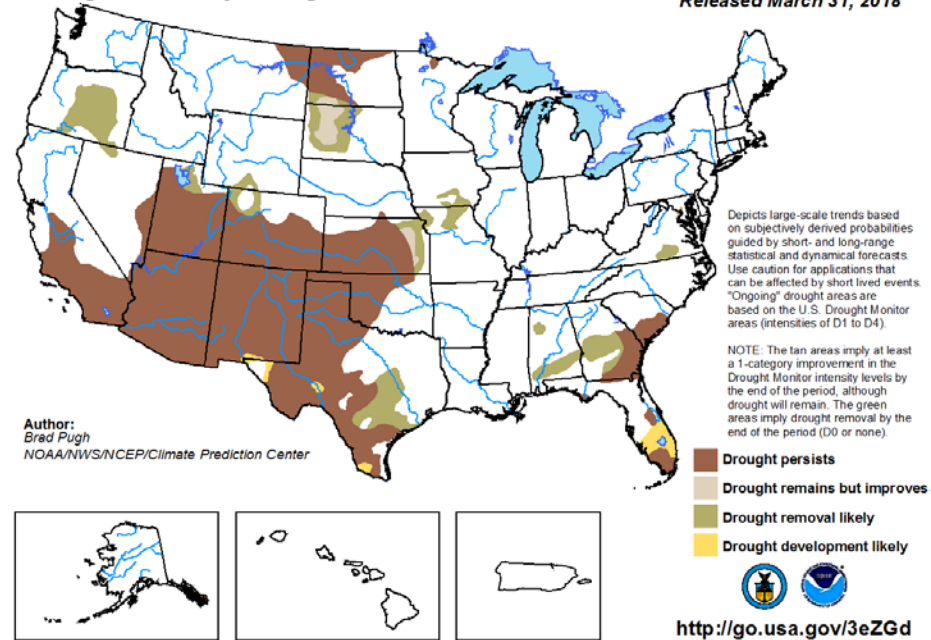
	Ending WY '19 31-Oct-19 Storage (6)	1-Nov-19 Spills (7)	Beginning WY 2020 1-Nov-19 Storage (8)	Winter 2019 (Nov thru April) Demands on Storage and Shrink (9)	1-Apr-20 Carryover (10)
NCWCD (C-BT)	8,217	1,253	6,963	(696)	6,267
WINDY GAP	0	0	0	0	0
POUDRE SYSTEM	4,895	0	4,895	(1,072)	3,824
GLIC SYSTEM	18,963	0	18,963	0	18,963
TOTAL	32,075	1,253		(1,768)	29,054
Target Storage Volume:					20,000

Recommendations

- Declare “Adequate Water Year”
- Maintain target storage volume at 20,000 AF
- Continue long-term rentals
- Rent excess supply
 - Requests over 11,000 AF

U.S. Monthly Drought Outlook Drought Tendency During the Valid Period

Valid for April 2018
Released March 31, 2018



U.S. Monthly Drought Outlook Drought Tendency During the Valid Period

Valid for April 2019
Released March 31, 2019





MEMORANDUM

TO: Sean Chambers, Water and Sewer Director
FROM: Jen Petrzeka, Water Resources Operations Manager
DATE: April 10, 2019
RE: April 2019 Water Supply Update

ISSUE

In accordance with the Drought Emergency Plan, staff will report the water supply status to the Greeley Water and Sewer Board (“Board”) in April, July and November of each year. Previous modeling analysis has shown that the amount of water needed in storage to supply the citizens of Greeley through an extreme drought is approximately 20,000 acre-feet. When this target storage level is met, the Board can declare an “adequate water year” with normal watering restrictions.

BACKGROUND

Water Year 2019 started with an above average snowpack in the basin which remained above average throughout the season. Statewide snowpack is at 132% of average with the southern part of the state experiencing snowpacks at over 150% of average. As of April 1, snowpack in the Cache la Poudre basin was 115% of average, while the upper Colorado basin sat at 128% of average as of April 8. The South Platte is also above average at 119%-much better conditions than we saw last year at this time when the basin was at 91%. The Colorado SWSI¹ data showed a value of 1.18 for the South Platte basin indicating slightly above average or normal supply conditions. Streamflow forecasts are expected to be at or above average for 2018 (NRCS Streamflow forecast April 1, 2019) for the Cache la Poudre and Big Thompson Basins. Reservoir storage in the South Platte basin is at 100% while storage in the Upper Colorado River basin is at 90%. In November 2018, a majority of the State was experiencing some level of drought. With the above average precipitation received so far, the majority of the State is free of drought conditions with only abnormal dryness to moderate drought in the southern part of the state.

The Greeley System Storage Analysis table for Water Year 2019 shows the April 2019 storage level will be approximately 29,000 acre-feet. This is after collateralizing 4,000 acre-feet of C-BT for Windy Gap operations in the Northern system. Northern Water declared a 70% C-BT quota at its April 11 board meeting to satisfy demand for 2019 and possibly increase the amount of rental water available to farmers from municipalities.

¹ The Surface Water Supply Index (SWSI) was developed by the Colorado Division of Water Resources and the U.S.D.A Natural Resources Conservation Service (NRCS). This is an indicator of mountain-based water supply conditions for the major river basins in Colorado. It is based on streamflow, reservoir storage, and precipitation. The SWSI scale goes from -4 (severe drought) to +4 (abundant supply) with 0 being near normal supply.

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.

The WY2019 projections for the Greeley Loveland Irrigation system are based on dry year yields. However, given the streamflow predictions, current snowpack conditions, and water already in storage, it is likely Greeley Loveland Irrigation system will see average yields.

The April 2019 target storage volume relies on the following assumptions:

- Existing Greeley storage volumes (carryover)
- 70% quota allocation from the Northern District
- 31 AF/share LL, 6 AF/share 7L, 6 AF/share GL
- 2012 water demands
- 4,000 acre-feet of Windy Gap water collateralized with C-BT supplies
- High Mountain Reservoirs (HMR) will not come into priority

RECOMMENDATION

The projection for the April 1, 2019 storage volume exceeds the target storage volume. Staff recommends the Board declare an adequate water year and that supplies be made available for immediate rental to agriculture while assuring target storage does not fall below 20,000 acre-feet.

Greeley System Storage Analysis

2019 Water Supply Update

C-BT=80% HMR*= 0 AF
Yields GL/LL/7L = 11/40/20

Water Year 2019 Operations

	Beginning Storage (1)	Estimated Yield (2)	Total Supplies (3)	Total WY 2019 Demands (4)	Early Season Spills and Collateralized (5)
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TOTAL	27,943	33,259	61,202	(30,692)	1,565
				Balance	32,075

Water Year 2020 Storage Volume

	Ending WY '19 31-Oct-19 Storage (6)	1-Nov-19 Spills (7)	Beginning WY 2020 1-Nov-19 Storage (8)	Winter 2019 (Nov thru April) Demands on Storage and Shrink (9)	1-Apr-20 Carryover (10)
NCWCD (C-BT)	8,217	1,253	6,963	(696)	6,267
WINDY GAP	0	0	0	0	0
POUDRE SYSTEM	4,895	0	4,895	(1,072)	3,824
GLIC SYSTEM	18,963	0	18,963	0	18,963
TOTAL	32,075	1,253		(1,768)	29,054
				Target Storage Volume:	20,000

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 12

TITLE: PRESENTATION OF 2020 PRELIMINARY
BUDGET

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

Staff will review with the Water and Sewer Board the department's activities in 2018 and will discuss the anticipated objectives of the 2020 budget. In 2015, an ordinance was approved to define how the Water & Sewer department's budget is approved. Included within the ordinance is this opportunity for the Water and Sewer Board to provide its insight into the direction of Water and Sewer's work programs before the overall budget is developed. Staff will incorporate any Board comments into our presentation to City Council on April 23rd.



Water and Sewer Preliminary 2020 Budget

April 17, 2019

Presentation Agenda

- Minimum rates
- Review 2018 accomplishments
- 2019 goals
- Vision for the 2020 budget and the proposed changes that are beyond the minimum rates
 - Items in red are proposed budget changes beyond the minimum rate

Minimum Rates

- Current operations and maintenance
- Debt Service
- Depreciation

2018 Accomplishments

- Bellvue Water Treatment Plant – Construction ongoing for 20 MG Treatment Train Replacement
- Boyd Water Treatment Plant – Process improvements ongoing (phased over 4 years)
- WPCF Master Plan completed
- WPCF Blower Replacement – 1st phase started
- Ashcroft Draw Sewer Phase 2a - Completed
- Modified cash-in-lieu pricing and removed limitation of use
- Started process to modify raw water requirements for commercial and multi-family
- Confirmed MSWSP Permitting Purpose and Need; and developed comprehensive alternative screening analysis

2019 Goals

- Milton Seaman permitting – Alternative analysis
- Windy Gap Firming – Ongoing design & legal issues
- Water treatment plant rehab
 - Bellvue – Continue construction to replace 20 MGD treatment train
- State required disinfection monitoring program - \$2.75 million
 - Start construction at both water plants
- Ashcroft Draw Sewer Phase 2b – Start construction in fall
- North Greeley Sewer Phase 2 – Limited construction complete this spring

2020 Budget Drivers - Operating

- Proposed new positions
 - Treated water reservoir maintenance technician - \$70,000
 - Reservoir system has expanded, number of staff have not changed since ~1980
 - Additional storage, Bellvue 60", distribution system growth
 - Water conservation specialist - \$70,000
 - Focused on outreach and communication
 - Water Conservation Manager focus on strategic planning
 - Rates/budget analyst - \$115,000
 - Utility Finance Business Manager role has shifted to financial and development policy
 - Rate modeling and budgeting need more attention
 - Agreement & contract management

2020 Budget Drivers - Operating

- Proposed additional funding requests
 - Farm maintenance increase (in High Mtn Reservoirs budget) - \$100,000
 - Non-Potable dump truck (one-time) - \$140,000
 - Non-Potable vacuum trailer (one-time) - \$60,000
 - Conservation vehicles (3, one-time) - \$100,000
 - Conservation trailer (one-time) - \$50,000

2020 Budget Drivers – Water Capital – New Projects

2020 Projects

- Non-Potable Expansion - \$1 million annually
- Boyd Sedimentation Basin Repair - \$1.3 million
- Boyd Flocculator Replacement - \$0.25 annually (4 years)
- Advanced Metering Infrastructure – \$1.7 million annually (3 years)

Future Years

- Hourglass Outlet Gates Rehab (2023) - \$0.3 million
- Comanche Secondary Gate Structure Rehab (2024) - \$0.2 million
- Boyd Chemical Tank Building (2021) - \$0.8 million

2020 Budget Drivers – Water Capital – Ongoing Projects

2020 Projects

- Water treatment plants rehab projects
 - Bellvue: \$26.5 million – Awarded in late 2017, construction continues until 2020
 - Boyd: \$13 million – Phased, started in late 2017 through 2022
- Windy Gap firming - \$56 million (construction)
 - Construction may not start until 2021
- Milton Seaman expansion - \$3.5 million (2020 only)
 - Additional budget scheduled through 2029 and beyond (mitigation, design and construction)

2020 Budget Drivers – Water Capital – Ongoing Projects

- Transmission rehab program
 - Annual program - \$1.8 to \$2.9 million/year
- Bellvue Pipeline – Gold Hill - \$4.1 million
 - Easements and construct one segment in Windsor
- Equalizer/Raw Water Storage (over 4 years) - \$29.6 million
 - Needed to support non-potable system expansion

2020 Budget Drivers – Sewer Capital – New Projects

2020 Projects

- No new 2020 projects

Future Years

- WPCF Primary Treatment phase 2 (2022) - \$21.0 million
- WPCF Primary Treatment phase 3 (2028) - \$68.2 million

2020 Budget Drivers – Sewer Capital – Continuing Projects

2020 Projects

- Ashcroft Draw Lift Station - \$3.8 million
 - Design: 2019, Construction in 2020
- Nitrification phase 2 - \$19 million

Future Years

- Poudre Trunk phase 2 (2021) - \$2 million

Projected Rate Impacts

- Disclaimer on limits of precision at this time:
 - Projected rate impacts are done from last year's model
 - Key expenses and revenues were updated, but many assumptions have changed since last year

New Water Projects & Additions – Approximate Rate Impact

Project	Annual Rate Impact	10 Year Rate Impact
All New Positions	0.05%	0.50%
All Other Supplemental Requests	0.01%	0.10%
Non-Potable Expansion	0.08%	0.8%
Advanced Metering Infrastructure	0.15%	1.50%
Bellvue-Gold Hill Segment	0.08%	0.80%
Windy Gap Firing	0.81%	8.10%
Equalizer/Raw Water Storage	0.33%	3.30%
Milton Seaman Expansion	2.8%	28.0%
All Additional Projects	4.3%	43%

- ▶ 2020 Rates: Overall water system rate projected to increase 5%
- ▶ Approximate average single family residential bill increases from \$61.15 to \$64.21

New Sewer Projects & Additions - Approximate Rate Impact

Project	Annual Rate Impact	10 Year Rate Impact
WPCF Primary Treatment Ph 2	0.95%	9.5%
WPCF Primary Treatment Ph 3	0.46%	4.6%
Ashcroft Draw Lift Station	0.15%	1.5%
Poudre Trunk Ph 2	0.08%	0.8%
All Additional Projects	1.60%	16.4%

- ▶ 2020 Rates: Overall sewer system rate projected to increase 7%
- ▶ Average single family residential sewer bill increases from \$20.14 to \$21.55

Approximate Residential Bill Impact

Average Bill	2019	2020	Change
Water	\$61.15	\$64.21	\$3.06
Sewer	\$20.14	\$21.55	\$1.41
Total	\$81.29	\$85.76	\$4.47

- ▶ Approximate 2019 combined water and sewer rate increase is 5.5%
- ▶ Anticipated 2020 rate changes from last year's budget
 - Water: 5%
 - Sewer: 4%
 - Combined: 4.8%

Questions?

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 13

TITLE: WATER COURT UPDATE

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, as well as a summary of the Water Resources Division's legal costs.



Water Court Cases Update

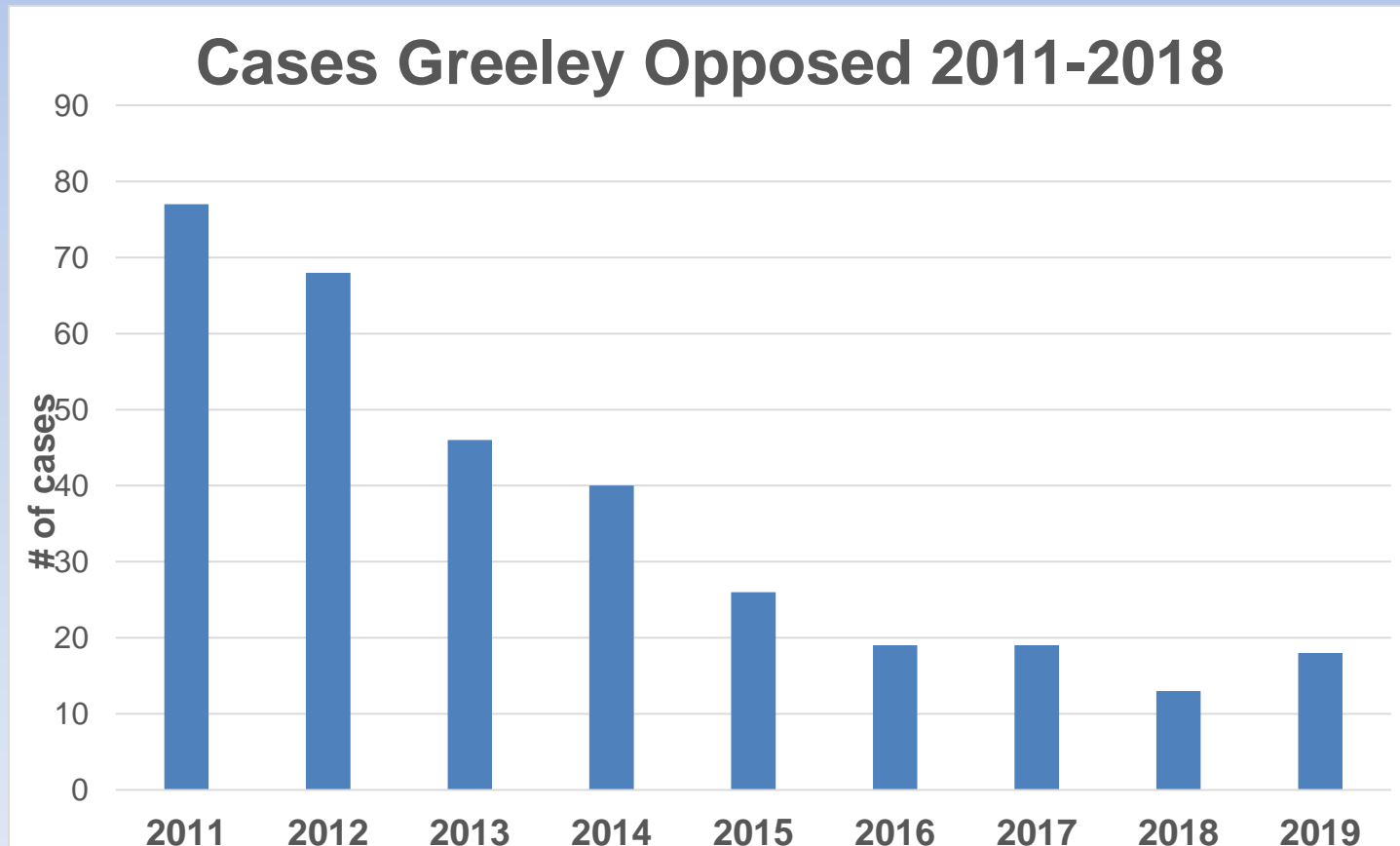
Jen Petrzelka, Water Rights Manager

April 17th , 2019



Statements of Opposition

- Since January filed 8 SOO
- Number of cases Greeley is an opposer: 18
- Up 5 cases from end of 2018



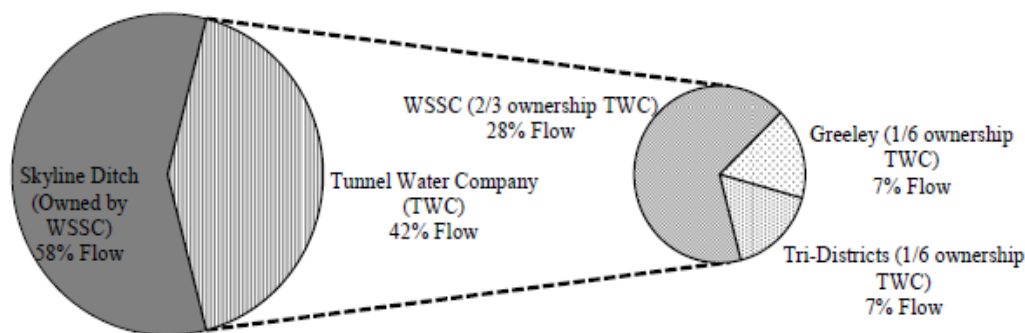
Greeley as Applicant

- ***Leprino (17CW3020)***
 - Quantification of reusable dairy bi-product water and appropriative rights of substitution and exchange
 - 14 opposers, 1 entry of appearance
 - 12 opposers stipulated
 - Working on remaining issues with final opposer
 - Trial set for July 2020
 - Expert disclosures due December 9th
- ***Larimer & Weld Change Case***
 - Entered into a Cost Reimbursement Agreement (2016)
 - Cooperating to obtain and review records
 - Preparing draft engineering report
 - Working on scheduling another meeting

Greeley as Applicant

- ***Tunnel Water Company diligence for Case No. 06CW258 (18CW3016)***
 - Greeley owns 1/6 of company or 7% flows (~900 AF)
 - Seeking absolute exchange of 13 cfs (cond.=36 cfs)
 - 2 opposers, 1 stipulation
 - **Finalizing response to last remaining opposer**

Laramie River Flows through Tunnel



Legal & Engineering Expenses

2019 Costs to date

Legal	\$ 39,757
Engineering	\$ 18,564
Total	\$ 58,320

This is 10% of the \$579,725 spent in 2017

Questions?



Water & Sewer Department

MEMORANDUM

TO: Greeley Water & Sewer Board

FROM: Jen Petrzeka, Water Rights Manager/Water Resources Operations Manager

DATE: April 17, 2019

RE: 1st Quarter Water Court Cases Update

This memorandum is a review of the Water and Sewer Department's legal activities from January of 2019 through March of 2019. 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 January, Greeley has filed 8 statements of opposition. Therefore the current number of pending Water Court cases where Greeley is an opposer is 18.

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:

17CW3020 Leprino

Greeley has been working with Leprino Foods, Inc. ("Leprino") on a water court application for quantification of reusable return flows and appropriative rights of substitution and exchange. Our application was filed in February of 2017. Statements of Opposition were filed by

- GIC-stipulated
- Thornton-stipulated
- Sorin (entry of appearance)-stipulated
- Northern Water-stipulated
- Central Colorado Water Conservancy District
- New Cache Irrigation Company-stipulated
- Ogilvy Ditch Company-stipulated
- Bijou Irrigation Company
- Martin Marietta Materials-stipulated
- City of Evans-stipulated

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.

- Cache la Poudre Water Users-stipulated
- United Water-stipulated
- Farmer's Reservoir and Irrigation Co.-stipulated
- ACWWA-stipulated
- ECCV-stipulated

Of the 14 opposers, 12 have stipulated. We are continuing to work through the remaining Opposers' issues. This case is now on a trial track with a trial set for July 2020 and our expert disclosures due December 9, 2019.

Larimer & Weld Irrigation Company change case

Greeley owns ____ shares of the Larimer and Weld Irrigation Company. Greeley will need to change its shares first by completing the ditch company review process and then adjudicating the changes in water court before using the changed shares in Greeley's system. Greeley and the Company entered into a cost reimbursement agreement in November 2016 and are cooperating to review the L&W records in anticipation of a future change case. We have started working on a draft engineering report and have met with the Company twice over the past year to discuss each other's operations and strategize ways we can work toward mutually beneficial outcomes.

18CW3016 (Application to make absolute, and for reasonable diligence, for 06CW258 Tunnel Water Company conditional rights)

In January 2018 Greeley filed its application for a finding of reasonable diligence on some of the Tunnel Water Company rights decreed in Case No. 06CW258, which include conditional appropriative rights of exchange and substitution, including storage. Greeley owns 7% of the Tunnel Water Company, which is a transbasin supply entering the Poudre River from the Laramie River Basin. In this diligence application, Greeley seeks a determination that a portion of the exchange from the Tunnel to Milton-Seaman Reservoir has been made absolute in the amount of 13.6 cfs. Statements of Opposition were filed by:

- City of Thornton-stipulated
- Cache La Poudre Water Users Association

Greeley received additional decree comments from the Cache La Poudre Water Users Association and is working on a response to be circulated sometime in the next week. We are hopeful this will resolve their remaining issues and we can settle the case.

LEGAL & ENGINEERING EXPENSES:

The Water Resource Division's outside legal and engineering expenses through March of 2019 totaled \$58,320 which is 10% of the \$579,725 total spent in 2018.

2019 Water Resources Legal and Engineering Costs

<u>1st quarter</u>	
Legal	\$39,757
Engineering	\$18,564
<i>Total</i>	<i>\$58,320</i>
<u>2nd quarter</u>	
Legal	\$0
Engineering	\$0
<i>Total</i>	<i>\$0</i>
<u>3rd quarter</u>	
Legal	\$0
Engineering	\$0
<i>Total</i>	<i>\$0</i>
<u>4th quarter</u>	
Legal	\$0
Engineering	\$0
<i>Total</i>	<i>\$0</i>
<i>Annual Total</i>	<i>\$58,320</i>

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 14

TITLE: EXECUTIVE SESSION

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

Topics for Discussion:

- A. Thornton IGA
- B. MSWSP
- C. Taylor & Gill



Agenda Item No. 14
Executive Session Topics

April 17, 2019



Bilateral, Non-Disclosure Agreement Between City of Greeley and City of Thornton

April 17, 2019

City of Thornton proposed Greeley Water and City of Thornton negotiate towards a potentially mutually beneficial agreement:

- Need a Bilateral Non-Disclosure Agreement (NDA) to undertake such complex negotiations
- The NDA can facilitate discussions of how mutual benefits to the NoCO Region and both Cities might be negotiated and realized

Staff Recommends Executive Session for the following purposes:

- Receiving legal advice from Council, and for determining positions relative to matters that may be subject to negotiations



MILTON SEAMAN WATER SUPPLY PROJECT

GREELEY, COLORADO

Long-Range Resource Planning Update

April 17, 2019

Prepared for Water & Sewer Board



Water & Sewer Staff Recommend Executive Session

**Request Executive Session for the Purpose of Receiving
Legal Advice from Environmental and Natural Resource
Council and City Attorney's office;**

Further: Executive Session Request for two additional topics



Right of First Refusal Agreement

- City of Greeley and Taylor and Gill Ditch Company entered into an Agreement Dated December 19, 2014 that provides City of Greeley Right of First Refusal for Ditch Carriage
- Staff Recommends Executive Session
 - Receiving legal advice from Council, and for determining positions relative to matters that may be subject to negotiations

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 15

TITLE: Review and Recommend City Council approve the
Bilateral, Non-Disclosure Agreement between the
City of Greeley and the City of Thornton

RECOMMENDATION: That the Water and Sewer Board recommend City
Council approve and authorize the City Manager to
execute the Bilateral, Non-Disclosure Agreement
between the City of Greeley and the City of
Thornton

ADDITIONAL INFORMATION:

The City of Thornton seeks to engage the City of Greeley in preliminary discussions related to the conveyance options for the Thornton Water Project (“TWP”). The TWP is a proposed pipeline in Larimer and Weld Counties that would deliver water previously purchased from the Water Supply and Storage Company to the City of Thornton. Recently, Thornton’s 1041 application to Larimer County was denied. Thornton has expressed interest in exploring use of capacity in Greeley’s existing transmission pipelines for the TWP. Greeley is open to such conversation provided that benefits to Greeley’s ratepayers and to the Poudre River can be ensured. Prior to engaging in potential negotiations with Thornton, staff recommends the City authorize a bilateral non-disclosure agreement.

Greeley and Thornton’s counsel is in the process of finalizing the terms of the agreement. A final version will be provided to the Board for its review as soon as possible.

LEGAL:

Under Sec. 2.07.040 of the Greeley Municipal Code, the City may enter into contracts or cooperative or joint activities with other governmental bodies so long as the City Council approves such agreements by resolution or ordinance.

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 16

TITLE: LEGAL REPORT

POSSIBLE ACTION: STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION:

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 17

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Tri City Water Board Mtg.
- Tour of Bellvue WTP with Town of Windsor Board
- Regional Efforts with Fort Collins, Loveland, Evans, and Tri-Districts
- Leprino Tour Debrief and Thank you
- Mayor's Challenge for water conservation

WATER & SEWER BOARD AGENDA APRIL 17, 2019

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 18

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: