

WATER & SEWER BOARD AGENDA

Wednesday August 19, 2020
2:00 p.m.

**MEETING WILL BE LIVE STREAMED ON YOUTUBE.COM DUE TO CITY CLOSURES
RELATED TO COVID-19**

Click on link below:

<https://www.youtube.com/user/CityofGreeley>

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 _____ Mr. Robert Miller
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. Memorandum of Understanding Regarding Water Quality Monitoring in Northern Colorado (Compounds of Emerging Concern Monitoring Program)
5. Amend Resolution No. 4, 2018 Frequency of Setting Cash-in Lieu Fees

End of Consent Agenda

6. Welcome New Employees
7. City Tax Initiatives
8. Dedication of Greeley Irrigation Company Water Rights
9. Purchase and Sale Agreement for Myers Water Rights



If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Shannon Metcalf at 970-415-1307.

10. Update on Drought Emergency Plan Revisions
11. Transfer of Evans Customers to Greeley Update
12. Legal Report
13. Executive Session
 - Matters Related to the Lower Latham Bypass Agreement
14. Lower Latham Bypass Agreement
15. Director's Report
 - Windy Gap Allotment Contract Update
10. Such Other Business That May Be Brought Before the Board and Added to This Agenda by Motion of the Board



If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Shannon Metcalf at 970-415-1307.

**City of Greeley
Water and Sewer Board
Minutes of July 15, 2020
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, July 15, 2020.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Joe Murphy, Bob Ruyle, Tony Miller, Manny Sisneros, Roy Otto and Robert Miller

Water and Sewer Department Staff:

Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Manager Jen Petrzelka, and Office Manager Shannon Metcalf

Legal Counsel:

Counsel to Water & Sewer Board Attorney Jim Noble and Environmental, Water Resources Attorney Jerrae Swanson, Water Resources Attorney Daniel Biwer (via Zoom) and Water Resources Attorney Aaron Goldman (via Zoom)

Other Guests:

Sherri Brown

2. Approval of Minutes

Mr. Miller moved, seconded by Mr. Murphy, to approve the June 17, 2020 Water and Sewer Board meeting minutes. The motion carried 7-0.

3. Approval of and/or Additions to Agenda

There were no changes to the agenda.

5. 2nd Quarter 2020 Water Court Update

Ms. Petrzelka updated the Board on the current status of Greeley's Water Court cases, including statements of opposition and cases where Greeley is the applicant, and provided a summary of the Water Resources Division's legal costs through June of 2020.

6. Water Supply Update

Ms. Petrzelka noted that staff reports to the Water and Sewer Board in April, July, and November of each year on Greeley's water supply status. Projected storage is presently at 25,573 acre-feet exceeding the target storage volume of 20,000 acre-feet. Reservoir accounting water resource calculations show the City's storage volume will likely be greater than the 20,000 acre-feet target. In addition, she noted that a drought is likely and staff will continue to monitor weather and water supply closely.

7. Approve and Recommend to the City Manager the Water and Sewer 2021 Operating Budget and 5 Year CIP

Mr. Dial provided an overview of the 2021 Operating Budget and 5 Year capital improvements plan ("CIP"). The proposed budget emphasizes system maintenance and reliability as well as securing additional water supplies and storage.

Mr. Dial stated that based upon the rate modeling, the average residential water bills will increase approximately 5% per month and residential sewer bills will increase approximately 9.5% per month. Plant investment fees will increase for water and sewer. Water plant investment fees will increase from \$10,500 to \$11,200 and sewer plant investment fees will increase from \$6,000 to \$6,800.

Mr. Miller moved, seconded by Vice-Chairman Todd, to Approve and Recommend to City Manager the Water and Sewer 2021 Operating Budget and 5 Year CIP. The motion carried 7-0.

9. Legal Report

Jim Noble of Welborn, Sullivan, Meck & Tooley provided this month's legal report to the Board.

1. **Statements of Opposition:** Based on review of the May 2020 Water Court Resume, Mr. Noble reported that staff and water counsel recommend that the Board authorize filing a statement of opposition in the following cases:
 - a. Case Number: **20CW3069** Application of Hunt Water, LLC, et al., for conditional underground water rights for several wells near the town of Gilcrest. These wells have existing irrigation rights and the applicants are seeking to expand the irrigated land substantially. The wells are contemplated to be added to Central's GMS 02CW335 and WAS 03CW99 augmentation plans, along with the PVIC

- 08CW71 augmentation plan. Mr. Noble recommended that Greeley file a statement of opposition ensure that Greeley's water rights are not adversely affected.
- b. Case Number: **20CW3070** Application of Hunt Water, LLC, for conditional underground water rights for several wells near the town of Gilcrest. These wells have existing irrigation rights and the applicants are seeking to add new water rights for industrial uses. The wells are contemplated to be added to Central's GMS 02CW335 augmentation plan, along with the PVIC 08CW71 augmentation plan. Mr. Noble recommended that Greeley file a statement of opposition ensure that Greeley's water rights are not adversely affected.
 - c. Case Number: **20CW3073** Application of PVIC Augmentation Group, to add wells to the PVIC 08CW71 augmentation plan. This application seeks to add numerous wells to this augmentation plan, including some wells included in Case Nos. 20CW3069 and 20CW3070, and others. The application contemplates that an existing augmentation plan, which Greeley was a party to, be abandoned and all the structures be moved to this augmentation plan. Mr. Noble recommended that Greeley file a statement of opposition ensure that proper terms and conditions are imposed, and that Greeley's water rights are not adversely affected.

Vice Chairman Todd made a motion, seconded by Mr. Miller, that the Board authorize the filing of a statement of opposition in Case Nos. 20CW3069, 20CW3070 and 20CW3073 and for staff and legal counsel to seek resolution of issues raised by these cases consistent with Water and Sewer Board Resolution No. 3 (2015). The motion carried 7-0.

10. Executive Session

Vice Chairman Todd moved, seconded by Mr. Miller, to hold an executive session to address the following matters, as provided by C.R.S. § 24-6-402(4)(a), (b) and (e) and Greeley Municipal Code § 2.04.020(a) (1), (2) and (5):

1. To receive advice from their attorney and determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators on matters related to the Leprino Development Agreement.

The motion carried 7-0.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Bob Ruyle, Manual Sisneros, Tony Miller, Joe Murphy, Roy Otto and Robert Miller, Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Utility Finance Manager Erik Dial, Water Resources Operations Manager Jennifer Petrzelka,

Water Administrator II Leah Hubbard, Counsel to Water and Sewer Board Jim Noble, Environmental and Water Resources Attorney Jerrae Swanson, and Office Manager Shannon Metcalf

This executive session was authorized by Subsections (a),(b) and (e) of Section 24-6-402(4) of the Colorado Revised Statutes, and Subsections (1), (2) and (5) of Section 2.04.020 (a) of the Greeley Municipal Code.

The Executive Session ended at 3:45 p.m. and the regular meeting resumed.

11. Director's Report

Mr. Chambers reported on the following items:

- Local Improvement Districts (LIDs)
- Advanced Metering Infrastructure Project
- Windy Gap Firing Allotment Contract

12. 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 4:23 p.m.

Harold Evans, Chairman

Shannon Metcalf, Office Manager

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 4

TITLE: MEMORANDUM OF UNDERSTANDING
 REGARDING WATER QUALITY
 MONITORING IN NORTHERN COLORADO
 (COMPOUNDS OF EMERGING CONCERN
 MONITORING PROGRAM)

RECOMMENDATION: APPROVE MOU

ADDITIONAL INFORMATION:

Staff recommends that the Water and Sewer Board approve the enclosed Memorandum of Understanding Regarding Water Quality Monitoring in Northern Colorado (Compounds of Emerging Concern Monitoring Program). Since 2009, Northern Water has partnered with the cities of Fort Collins, Boulder, Longmont, Loveland, Broomfield, Greeley and the Town of Estes Park, to share the annual program costs of approximately \$112,650 (in 2020). Greeley's contribution to the program is \$13,798 and the Memorandum of Understanding serves to renew the commitment of the partners and set forth the cost sharing allocation.

Memorandum of Understanding Regarding Water Quality Monitoring in Northern Colorado (Compounds of Emerging Concern Monitoring Program) 2020

Water & Sewer Board



City of Greeley Water & Sewer Department • 1100 10th Street, Suite 300 Greeley, CO 80631
www.greeleygov.com/water • (970) 350-9811



CEC Monitoring Program

- Collaborative Partnership in existence since 2009
- Northern Water and 7 participating municipalities
- Cost-Sharing based on source water use
- Users of CB-T and Windy Gap

Cost share Allocation

- Total program costs in 2020 are \$112,650
- Greeley's portion is \$13,798 (~ 12%)
- Samples are collected biennially, and in alternate years funds support special studies and program development

Compounds of Concern

- Partners collect samples from 20 sites and Northern coordinates the testing and reporting
 - Contaminants of Concern are unregulated compounds that include pharmaceuticals, personal care products, hormones and pesticides, and endocrine disruptors

Compounds of Concern

- Proactive approach to protecting source water
- Water treatment and wastewater treatment systems were not designed to treat these compounds
- Controlling these compounds at the source is the best solution

Questions?



WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 5

TITLE: AMEND RESOLUTION NO. 4, 2018
FREQUENCY OF SETTING CASH-IN-LIEU
FEES

RECOMMENDATION: AMEND RESOLUTION NO. 4, 2018 TO ALLOW
CASH-IN-LIEU TO BE RECALCULATED AS
NECESSARY BUT NO LESS THAN ONCE A
YEAR

ADDITIONAL INFORMATION:

Water and Sewer Board Resolution Number 4, 2018 changed the way cash-in-lieu is calculated, the amount of cash-in-lieu that can be purchased for raw water requirements, and set the frequency of amending the cash-in-lieu price to once per year. Because of rapid escalation in water right values, staff is proposing to revise the resolution to allow for the cash-in-lieu price to be set as needed but no less than once a year. This revision will allow the City to be more responsive to the water rights market.

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

RESOLUTION ____, 2020

**RESOLUTION AMENDING RESOLUTION NO. 4, 2018, TO ADJUST THE
FREQUENCY BY WHICH THE GREELEY WATER AND SEWER BOARD MAY
CALCULATE THE FAIR MARKET VALUE OF WATER**

WHEREAS, Chapter 14.06 of the Greeley Municipal Code specifies that under certain circumstances the City may accept a cash-in-lieu fee to fulfill the dedication requirements associated with an applicant's request for water service; and

WHEREAS, Section 14.06.090 of the Greeley Municipal Code specifies that the Greeley Water and Sewer Board shall determine, in its sole discretion, the fair market value of water utilized to calculate cash-in-lieu fees pursuant to Chapter 14.06; and

WHEREAS, Water and Sewer Board Resolution Number 4, 2018 ("Res. 4, 2018"), attached hereto as Exhibit A, obligates the Water and Sewer Board to calculate and set the fair market value of water on an annual basis; and,

WHEREAS, the Water and Sewer Board desires to recalculate and set the fair market value of water on a more frequent basis when necessary and to amend Res. 4, 2018, to permit the same.

NOW, THEREFORE, BE IT RESOLVED BY THE GREELEY WATER AND SEWER BOARD AS FOLLOWS:

Section 1. Section 5 of Res. 4, 2018 is hereby amended and replaced as follows:

Section 5. The Greeley Water and Sewer Board may recalculate and set the Cash-in-Lieu fee amount as necessary but shall do so no less than once per calendar year.

Section 2. Except as amended and replaced herein, all terms and provisions of Res. 4, 2018 shall remain in full force and effect.

PASSED AND ADOPTED, SIGNED, AND APPROVED THIS _____ day of August, 2020.

ATTEST:

**GREELEY WATER AND SEWER
BOARD:**

Roy Otto, Secretary

By: Harold G. Evans, Chairman

GREELEY WATER AND SEWER BOARD
RESOLUTION NO. 4, 2018

**RESOLUTION ADOPTING FORMULA FOR CALCULATION OF FAIR MARKET
VALUE OF WATER AND ELIMINATING THE EIGHT ACRE-FOOT CAP ON CASH-
IN-LIEU OF RAW WATER DEDICATION**

WHEREAS, Municipal Code Section 14.24.100 specifies that under certain circumstances the City may accept the cash equivalent of raw water dedication, based upon the fair market value of the water as more particularly described therein; and

WHEREAS, Water and Sewer Board Resolution Number 7, 2015, attached hereto as Exhibit A, adopted a calculation of the fair market value based on the rolling three-year average price per Colorado-Big Thompson ("C-BT") unit; and

WHEREAS, Water and Sewer Board Resolution Number 14, 2014, attached hereto as Exhibit B, requires that the Water and Sewer Board must approve cash-in-lieu payments in excess of the cash equivalent of eight acre-feet of dedication credit; and,

WHEREAS, the Water and Sewer Board desires to adopt a new calculation to establish the fair market value of water and to allow the Water and Sewer Department to accept cash equivalent payments without restriction.

NOW, THEREFORE, BE IT RESOLVED BY THE GREELEY WATER AND SEWER BOARD AS FOLLOWS:

Section 1. Water and Sewer Board Resolution Number 7, 2015, is hereby rescinded.

Section 2. The Water and Sewer Department shall create a portfolio that identifies all unallocated water supplies that have been changed to municipal use ("Water Portfolio"). Unallocated water supplies are those supplies that are physically and legally available to meet new system demand, but are not currently being used to meet that demand, and are unencumbered by an agricultural lease or rental agreement.

Section 3. The fair market value of water shall be an amount equal to the sum of the per acre-foot value of the unallocated water supplies identified in the Water Portfolio and the per acre-foot cost of water storage ("Cash-in-Lieu"). The per acre-foot value of the unallocated water supplies identified in the Water Portfolio will be calculated by dividing the total value by the total acre-foot firm yield of the unallocated water supplies identified in the Water Portfolio ("Per Acre-Foot Value of Unallocated Water Supply"). The total value of the unallocated water supplies will be calculated by using either the original cost and inflating the value since acquired or, where no original cost information is available, by using the current market value of each source of water supply identified in the Water Portfolio. The per acre-foot cost of water storage will be calculated

by dividing the total cost of all new water storage facilities by the total future system demand ("Per Acre-Foot Cost of Storage"). The total cost of all new water storage facilities will be based on the total projected cost to develop all new water storage facilities.

$$\frac{\text{Per Acre-Foot Value of Unallocated Water Supply} + \text{Per Acre-Foot Cost of Storage}}{\text{Cash-in-Lieu}}$$

Section 4. The Water and Sewer Department may accept Cash-in-Lieu of raw water dedication so long as there are unallocated water supplies within the Water Portfolio. In the event that there are no unallocated water supplies within the Water Portfolio, the owners or lessees of land, and subdividers or owners of a subdivision within or without the City limits shall dedicate raw water to the City in accordance with Chapter 24 of Title 14 of the Greeley Municipal Code and any applicable resolution adopted by the Water and Sewer Board.

Section 5. Cash-in-Lieu shall be calculated and set annually by the Water and Sewer Board.

Section 6. Paragraph 4 of Water and Sewer Board Resolution Number 14, 2014 is amended and replaced as set forth below to allow the Water and Sewer Department to accept Cash-in-Lieu payments without restriction:

4. Land which has not been continuously irrigated by agricultural water rights according to the criteria set forth in Water and Sewer Board Resolution Number 14, 2014, and elsewhere and which is undergoing development must satisfy the City's raw water requirement either by the transfer of C-BT units or the payment of cash-in-lieu, at a rate per acre-foot that is determined by the Board from time to time in its discretion. The Water and Sewer Department shall have the authority to accept the transfer of C-BT units or cash-in-lieu payments, or a combination thereof, in full satisfaction of the City's raw water requirement without further approval by the Board.

Section 7. Except as amended and replaced herein, all terms and provisions of Water and Sewer Board Resolution Number 14, 2014, shall remain in full force and effect.


PASSED AND ADOPTED, SIGNED, AND APPROVED THIS 18th day of July, 2018.

ATTEST:



Roy Otto, Secretary

**GREELEY WATER AND SEWER
BOARD**



By: Harold G. Evans, Chairman

Amend W&S Resolution Number 4, 2018 – Frequency of Setting Cash-in-Lieu

August 19, 2020



Background

- Resolution set the methodology for the cash-in-lieu price
 - Fair market value of unallocated water in the City's water portfolio plus the per acre-foot cost of water storage
- Allowed a cash-in-lieu payment for any volume of raw water requirement if water dedication was unavailable
- Cash-in-lieu price set once a year
 - Propose to revise the price setting process



Issue

- Water right values experienced hyperinflation last few years
- Setting cash-in-lieu once a year was not capturing the rapidly increasing water right values



Proposal

- Amend W&S Resolution No. 4, 2018 to recalculate and set the cash-in-lieu fee amount as necessary but no less than once per calendar year
- Staff will bring recalculated cash-in-lieu fees to the Board for approval more often during times of rapid changes in water right values
 - Likely 2 to 3 times a year





Questions?

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 6

TITLE: WELCOME NEW EMPLOYEES

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 7

TITLE: CITY TAX INITIATIVES

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

Staff will provide a presentation.

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 8

TITLE: DEDICATION OF GREELEY IRRIGATION
COMPANY WATER RIGHTS

RECOMMENDATION: RECIND RESOLUTION 8, 1998 AND ADOPT
RESOLUTION TO GOVERN DEDICATION OF
GREELEY IRRIGATION COMPANY WATER
RIGHTS

ADDITIONAL INFORMATION:

Water & Sewer Board Resolution 8, 1998 set forth criteria for dedication of Greeley Irrigation Company (“GIC”) stock towards the satisfaction of Greeley’s raw water dedication requirements. That resolution allows GIC water rights to be redeemed to meet up to two (2) acre-feet per acre of Greeley’s dedication requirements for both residential and commercial developments, and up to two-thirds (2/3) of the total raw water dedication required for residential development.

GIC water cannot be easily treated for potable water supplies; by in large, its use is constrained to non-potable applications. New construction in Greeley is trending to denser developments with less irrigated area. This trend, among other causes, leads the current GIC dedication policy to under-collect potable water supplies. Staff recommends that the Water & Sewer Board rescind Resolution 8, 1998 and adopt the enclosed resolution to allow GIC dedication only for non-potable applications.

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

RESOLUTION ____, 2020

**A RESOLUTION CONCERNING ACCEPTANCE OF GREELEY IRRIGATION COMPANY
WATER RIGHTS IN SATISFACTION OF RAW WATER DEDICATION REQUIREMENTS
(RESCINDING AND REPLACING RESOLUTION 8, 1998)**

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 and Section 14.04.110 of the Greeley Municipal Code authorize and require the Water and Sewer Board ("Board") to, *inter alia*, acquire water and sewer assets for the City; and

WHEREAS, Chapter 14.06 of the Greeley Municipal Code sets forth the raw water dedication requirements associated with applications for water service from the City; and

WHEREAS, Resolution 8, 1998, adopted by the Board on November 17, 1998, sets forth the standards by which City staff may accept Greeley Irrigation Company water rights in satisfaction of such raw water dedication requirements; and

WHEREAS, the Board now desires to amend the standards by which City staff may accept Greeley Irrigation Company water rights in satisfaction of such raw water dedication requirements;

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

1. Resolution 8, 1998 is hereby rescinded and replaced in its entirety. Greeley Irrigation Company water rights accepted in dedication by the City shall meet the standards set forth in this resolution.

2. This resolution supersedes Resolution 14, 2014 regarding the dedication of Greeley Irrigation Company water rights only.

3. Greeley Irrigation Company water rights shall not be accepted by the City in satisfaction of the raw water dedication requirements associated with potable water service. Greeley Irrigation Company water rights shall be accepted by the City only in satisfaction of the raw water dedication requirements associated with non-potable water service through City-owned or authorized irrigation systems on the land historically irrigated by the water rights.

4. Greeley Irrigation Company water rights accepted in dedication by the City shall have historically irrigated the land being developed, and be accompanied by any documents and materials reasonably required by the City to ensure consistency with the decree entered by the Division 1 Water Court in Case No. 96CW658 and with subsequent decrees adjudicating changes of Greeley Irrigation Company water rights.

5. Greeley Irrigation Company water rights accepted in dedication by the City shall be accompanied by a restrictive covenant in a form acceptable to the City, requiring the cessation of irrigation on the historically irrigated land and executed by the owners of the land and any lienholders prior to the City's acceptance of the water rights.

6. Persons and entities dedicating Greeley Irrigation Company water rights to the City in accordance with the standards of this resolution shall be entitled to a credit of 10.3 acre-feet per share.

7. In the event of any conflict between this resolution and the requirements codified in the Greeley Municipal Code, the Municipal Code shall prevail.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF AUGUST 2020.

ATTEST

CITY OF GREELEY
WATER AND SEWER BOARD

Roy Otto
Secretary to the Board

Harold Evans
Chairman, Water and Sewer Board

Updated Raw Water Dedication

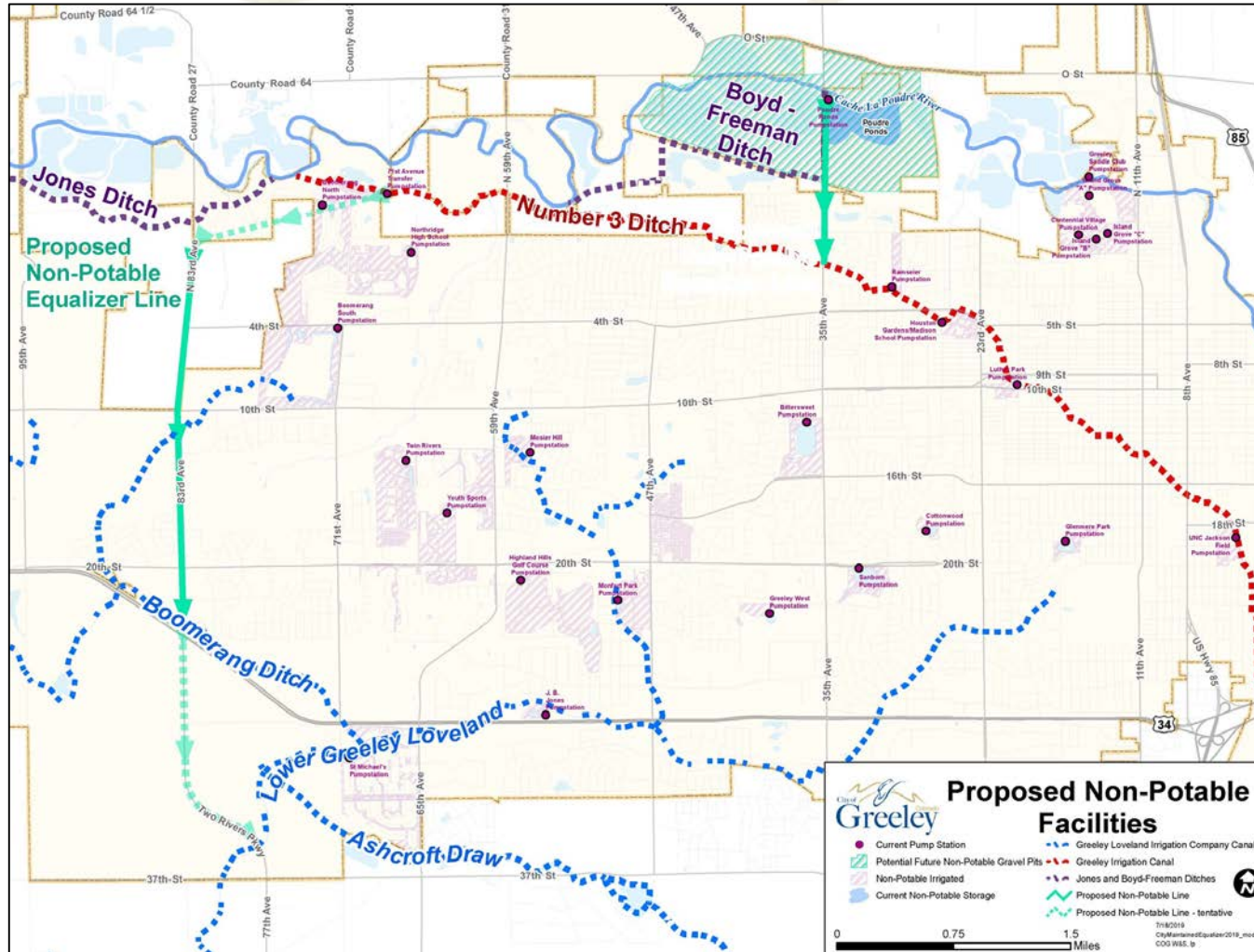
for

**Greeley Irrigation Company
Stock**

August 19, 2020

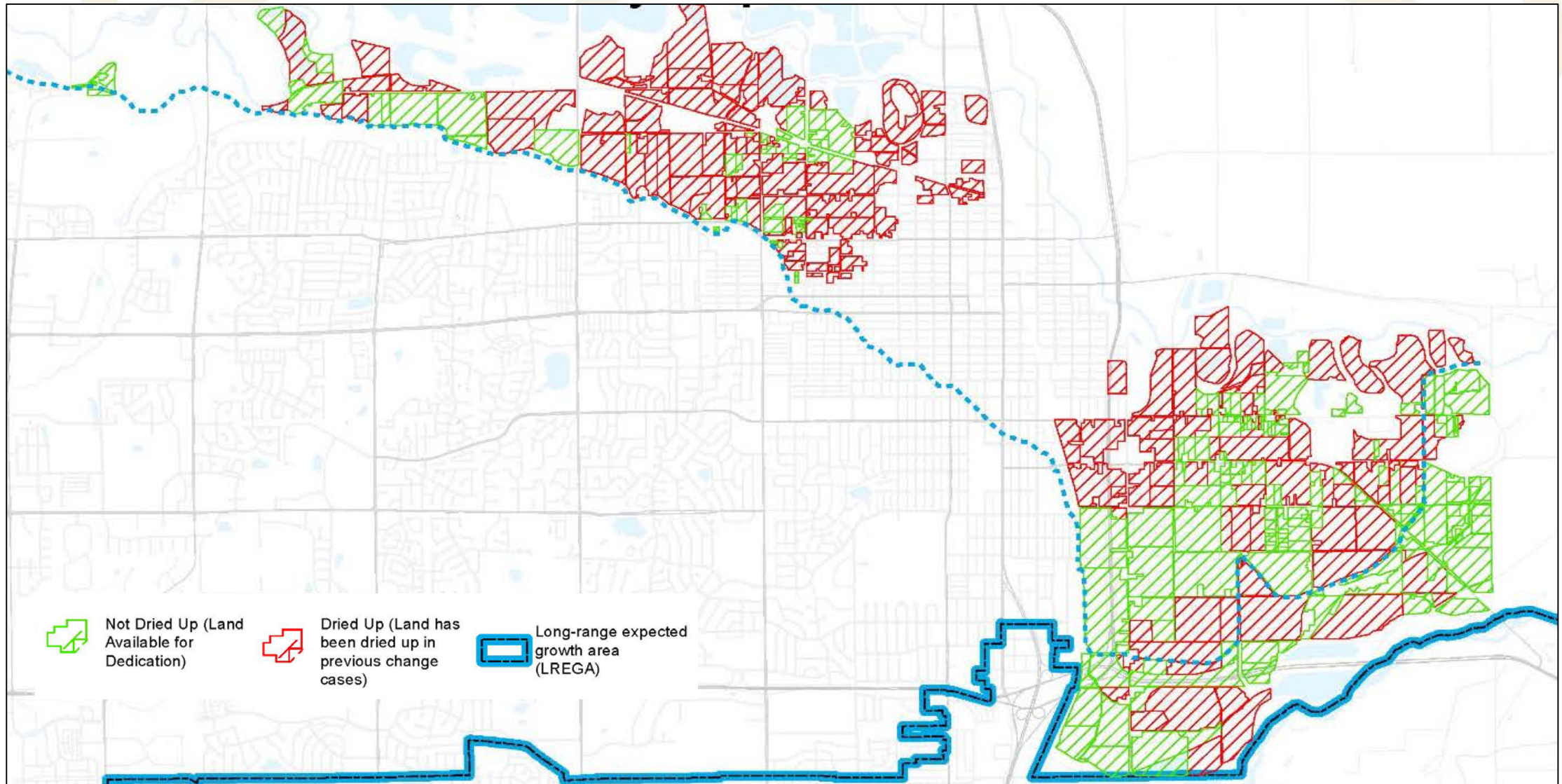


Greeley Irrigation Company



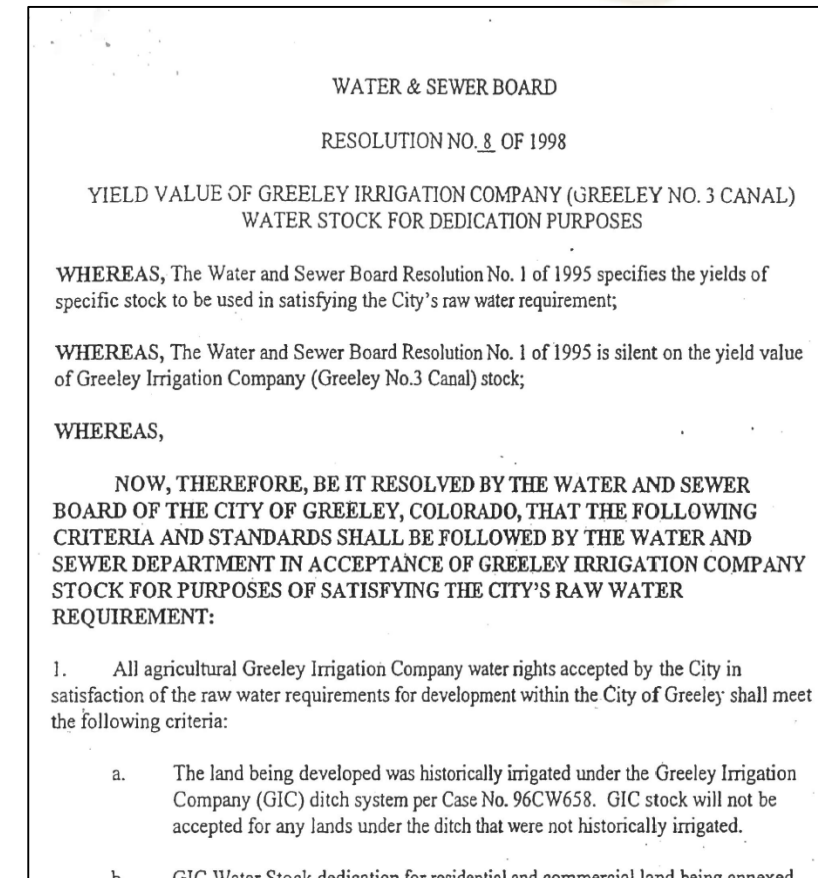
- ✓ Lower Poudre River water source
- ✓ Cannot be easily treated for potable use
- ✓ Useful non-potable and replacement/augmentation source

Greeley Irrigation Company



Current Raw Water Policy

- ✓ Resolution 8, 1998
- ✓ GIC stock accepted for raw water dedication at 2 AF/acre (residential & commercial)
- ✓ GIC stock not to exceed 2/3 of total raw water requirements (residential)
- ✓ 10.3 AF/share



Proposed Policy Change

- ✓ No longer accept GIC stock for potable raw water dedication
- ✓ GIC stock accepted only for non-potable dedication
 - ✓ For use through City non-potable irrigation systems
- ✓ Maintain 10.3 AF/share credit

Rationale

- ✓ Current policy under-collects potable supplies
 - ✓ Commercial use can be 100% indoor
 - ✓ Modern (dense) residential developments typically need less than 2 AF per acre for irrigation
- ✓ Strengthens non-potable program
- ✓ Value of GIC less than current cash-in-lieu rate



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Recommendation

Staff recommends that the Water & Sewer Board rescind Resolution 8, 1998 and adopt the enclosed resolution to govern the dedication of Greeley Irrigation Company water rights

A decorative wavy line in a light beige color spans the top of the slide.

Thank you.

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 9

TITLE: PURCHASE AND SALE AGREEMENT
FOR MYERS WATER RIGHTS

RECOMMENDATION: APPROVE MYERS PURCHASE AND SALE AGREEMENT

ADDITIONAL INFORMATION:

Staff recommends that the Water and Sewer Board approve the enclosed Purchase and Sale Agreement for water rights with Frederick L. and Deborah J. Myers. The Agreement contemplates Greeley's purchase of one-half (1/2) shares of Water Storage and Supply Company. A dry-up covenant, revegetation covenant, and a leaseback are included in the Purchase and Sale Agreement. The total purchase price is \$1,050,000.00.

PURCHASE AND SALE AGREEMENT FOR WATER RIGHTS
(Frederick L. Myers and Deborah J. Myers)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into by and between Frederick L. Myers and Deborah J. Myers (collectively referred to as "Seller"), and the City of Greeley, a Colorado home rule municipality, acting by and through its Water and Sewer Board ("Buyer").

RECITALS

A. The Seller owns real property located in part of Section 18, Township 7 North, Range 67 West of the 6th Principal Meridian, more particularly described in Exhibit A hereto (the "Land"); and

B. The Seller owns certain water rights, more particularly described in Section 2(c) below (the "Water Rights"), comprising of one-half (1/2) share of stock in the Water Supply and Storage Company; and

C. By this Agreement, Buyer agrees to buy, and Seller agrees to sell, all of the Water Rights, on terms and conditions as are set forth herein, and to grant restrictive covenants for no further irrigation of the Land and revegetation of the Land;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration received, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. AGREEMENT OF SALE. 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 municipality, acting by and through its Water and Sewer Board.

b. Seller. Frederick L. Myers and Deborah J. Myers, collectively.

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 one-half (1/2) share of stock of that one (1) share of stock in the Water Supply and Storage Company, said one (1) share of stock represented by Share Certificate No. 006237, which has historically irrigated the real property described on Exhibit A attached hereto. The Water Rights shall also include any and all lateral ditches, easements, rights of way and entitlements

appurtenant to or used in connection with the Water Rights. The Water Rights shall not include any interest in any wells, well rights, well permits, whether tributary, nontributary, or not nontributary, nor shall it include any interest in the groundwater right known as the “Sutherland Sump No. 3,” as decreed in Case No. W-5675, by District Court, Water Division No. 1, State of Colorado on July 12, 1977.

d. Land. Seller shall retain the real property, including all minerals of whatsoever kind or character in, under, and upon or that might be produced therefrom, more particularly described on Exhibit A (“Land”). The parties agree that within ten (10) days after the Title Objection Deadline, defined below, (i) if the Title Documents described in Section 4 reflect any discrepancy between the legal description set forth on Exhibit A and the legal description of the real property owned by Seller as disclosed by the Title Documents, (ii) if Buyer, at its expense, obtains a survey of the Land, or (iii) subject to the provisions of Section 3(d) below, if any matter discovered pursuant to Sections 4, 5 or 6 reflects any inaccuracy in the description of the Water Rights, then the parties will modify Exhibit A and/or Subsection 2(c) above and use the amended legal description(s) at the Closing. The Land shall include sufficient acreage historically irrigated by the Water Rights to enable Buyer to obtain judicial approval of a change of use of the Water Rights when the Land is subject to Restrictive Covenants (No Irrigation), described on Exhibit B attached hereto and to Restrictive Covenants (Revegetation), described on Exhibit C attached hereto.

e. Property. The Property consists of the Water Rights, together with the Restrictive Covenants (No Irrigation) and the Restrictive Covenants (Revegetation) on the Land, described on Exhibits B and C, respectively, attached hereto and incorporated by reference herein.

f. Company. The Company shall individually and/or collectively refer to the Water Supply and Storage Company.

g. Dates and Deadlines. Mutual execution of contract (“MEC”) means the latest date upon which Seller and Buyer have signed this Agreement in accordance with Sections 25 and 26 below. See Sections 25 and 26 for contract formation. The table below contains a non-exclusive list of the transactional dates and deadlines for this Agreement.

Item No.	Reference	Event	Date or Deadline
1	§ 3(a)	Earnest Money Deposit	5 Days after MEC
2	§ 4a	Title Deadline	10 Days after MEC
3	§ 5b	Off-Record Matters Deadline	15 Days after MEC
4	§ 5a	Title Objection Deadline	60 Days after MEC
5	§ 6f	Share Reissuance Deadline	30 Days after MEC
6	§ 5b	Off-Record Matters Objection Deadline	60 Days after MEC
7	§ 6c	Inspection Objection Deadline	60 Days after MEC
8	§ 6d	Resolution Deadline	70 Days after MEC

9	§ 8	Closing Date	90 Days after MEC
10	§ 13	Possession Date	Closing Date
11	§ 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, Restrictive Covenants (No Irrigation); Exhibit C, Restrictive Covenants (Revegetation); Exhibit D, Special Warranty Deed; Exhibit E, Irrigation Water Lease Form; and Exhibit F, Historical Use Affidavit.

3. PURCHASE PRICE AND TERMS. The total Purchase Price for the Property shall be one million, fifty thousand dollars and zero cents (\$1,050,000.00), payable by Buyer as follows:

a. A portion of the Purchase Price, which shall be considered earnest money, shall be paid by Buyer prior to Closing (“Earnest Money”). The Earnest Money, in the amount of twenty-five thousand dollars and zero cents (\$25,000.00), shall be due, payable to, and held by Unified Title Company, located at 1275 58th Avenue, Unit C, Greeley, CO 80634 (“Title Company”), in its trust account, five (5) days after MEC. The Earnest Money deposit shall be credited against the Purchase Price if Closing occurs and Buyer receives Possession of the Property. The Earnest Money shall be refundable to Buyer at any time prior to the expiration of the Title Objection, Off-Record Matters Objection, or Inspection Objection Deadlines if Buyer is not satisfied with the Property. The Earnest Money shall also be subject to return to Buyer in the event of termination of this Agreement by Buyer under Sections 5, 6, and 18. Except as set forth in the preceding two (2) sentences, the Earnest Money shall be non-refundable to Buyer.

b. At Closing, Buyer shall pay to Seller the Purchase Price, less the Earnest Money, by cashier’s check, wire transfer, or other immediately available funds; plus any other amounts required to be paid by Buyer at Closing; plus or minus any prorations or credits.

c. All financial obligations of Buyer arising under this Agreement are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by the City Council of the City of Greeley.

4. EVIDENCE OF TITLE.

a. Evidence of Title. On or before the Title Deadline, Seller shall cause to be furnished to Buyer, at Buyer’s expense, a current commitment for 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. However, neither Seller nor Buyer shall have any obligation under this Agreement to purchase the title insurance policy after Closing. Buyer may elect to acquire this insurance (limited to the covenants attached hereto as Exhibits B and C) at its expense.

b. Copies of Exceptions. On or before the Title Deadline, Seller, at Seller’s expense, shall furnish to Buyer (i) a copy of any plats, declarations, covenants, conditions, and restrictions burdening the Property, and (ii) copies of 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. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents which, in Buyer’s opinion, may prevent Buyer from receiving the Water Rights and the covenants attached hereto as Exhibits B and C, shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline, or within five (5) days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Buyer’s notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

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 lease(s), survey(s), and other agreement(s) 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 the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before the Off-Record Matters Objection Deadline. If Seller does not receive Buyer’s notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

c. Right to Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided in Subsections 5(a) or 5(b), Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to the Resolution Deadline. If such unsatisfactory title condition(s) are not corrected on or before the Resolution Deadline to Buyer’s satisfaction, this Agreement shall then terminate one (1) day after the Resolution Deadline, unless before such termination 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, 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, and testing reports and records maintained by the Company concerning the Water Rights, including without limitation share

certificate records, delivery records, share traces, and assessment records (or, in the alternative, Seller shall obtain for Buyer the right to inspect and copy such Company records); and

(ii) Copies of all contracts or other agreements relating to the operation, use, maintenance or leasing of the Land or Property.

b. Right to Inspect & Cooperation.

(i) Buyer, at its sole cost and expense, shall have the right to enter upon the Land from time to time to perform such tests or inspections as Buyer deems desirable to allow Buyer to evaluate the Water Rights and the condition and use of the Land. Such inspections or testing shall be conducted in a manner to minimize or avoid any disruption to Seller's business or operation of the Land.

(ii) Buyer and its employees, contractors and attorneys shall have the opportunity from time to time to interview Seller, and its employees, contractors and agents, to assist Buyer in determining the historical use of the Water Rights. Seller agrees to cooperate with Buyer to facilitate such interviews and to sign affidavits of 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.

(iii) Buyer represents it may file an application in the District Court, Water Division No. 1, State of Colorado to, among other purposes, change the use of the Water Rights ("Change of Use Application"). The Seller agrees to support and reasonably cooperate with the Buyer in the Buyer's activities in furtherance of the Change of Use Application, including but not limited to producing any and all documents and disclosing in writing any and all known facts relating to ownership, restriction or use of the water associated with the Shares supporting the historic use of the water rights on the Land. The Seller further agrees not to oppose the Buyer's Change of Use Application. The provisions of this Subsection 6(b)(iii) shall survive the termination of this Agreement.

c. Inspection Objection Deadline. If Buyer is not satisfied with the results of its inspection of the Property and its review of the information described in this Section 6 for any reason whatsoever, including but not limited to Buyer's determination, in its subjective discretion, that the Land is not capable of supporting needed dry-up requirements, 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 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 shall 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 for 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.

f. Reissuance of Split Share. On or before the Share Reissuance Deadline, or such other date as Seller and Buyer mutually agree, Seller shall:

(i) cause the Company to split that one (1) share of stock in the Water Supply and Storage Company, represented by Share Certificate No. 006237, into two (2) one-half (1/2) shares of stock, each with a reissued and new share certificate;

(ii) designate one (1) of the reissued and new share certificates as the Water Rights described under Section 2(c), to be conveyed at Closing under Section 14(a);

(iii) provide Buyer with a written notice of said designation and a photocopy of said designated share certificate.

7. EXTENSION OF DEADLINES BY BUYER. If Buyer, after exercising reasonable good faith efforts, is unable to complete the title review and/or inspections described in Sections 5 and 6 by the Title Objection Deadline and/or the Off-Record Matters Objection Deadline and/or the Inspection Objection Deadline, respectively, Buyer shall have the right, prior to expiration of such deadline(s), to extend such deadline(s) for an additional period not to exceed fifteen (15) days, by sending Seller notice of such fact which describes such additional period. Upon the sending of such notice, the Resolution Deadline and Closing Date shall be automatically extended by a similar period or by such other period as the parties may determine.

8. CLOSING. Delivery of all closing documents described in Section 14 below from Seller to Buyer shall be at Closing ("Closing" or "Closing Date"). Closing shall be on the date specified as the Closing Date or by mutual agreement at an earlier or later date. The hour and place of Closing shall be as designated by mutual agreement, or absent such agreement at 10:00 A.M. at the offices of the Title Company.

9. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient Special Warranty Deed, in the form of Exhibit D, to Buyer, at Closing, conveying the Water Rights free and clear of all encumbrances or restrictions, an assignment of the portion of the Water Rights represented by shares in the Company in a form

and manner acceptable to the Company, and the original stock certificates for the shares described in Section 2(c) above. Seller shall also execute the Restrictive Covenants with respect to the Land. If there are lienholders or leaseholders in the Land, such parties shall acknowledge and approve the Restrictive Covenants (No Irrigation) as shown on Exhibit B and the Restrictive Covenants (Revegetation) as shown on Exhibit C.

10. PAYMENT OF ENCUMBRANCES. Any encumbrance against the Water Rights or against the Land, where the lienholder does not execute the restrictive covenants pursuant to Subsections 14(f) and 14(g), shall be paid at or before Closing from the proceeds of this transaction or from any other source.

11. CLOSING COSTS; DOCUMENTS AND SERVICES. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate closing services shall be paid at Closing by Buyer. Buyer shall pay the transfer fees for the assignments of the shares in the Company, if any.

12. PRORATIONS. The following shall be prorated to Closing Date, except as otherwise provided: none.

13. POSSESSION. Possession of the Water Rights shall be delivered to Buyer on Possession Date and Possession Time.

If Seller, after the Possession Date and Possession Time, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of five hundred dollars and zero cents (\$500.00) per day from the Possession Date until possession is delivered. Refer to Section 15 concerning use of the Water Rights after 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 Buyer: (i) a Special Warranty Deed, in the form of Exhibit D, attached hereto and incorporated by this reference herein; (ii) all other documents necessary to transfer to Buyer the Water Rights, including assignments of the shares in the Company in a form and manner acceptable to the Company; and (iii) the original stock certificates for the shares in the Company.

b. Seller hereby consents to the recording of the Restrictive Covenants (No Irrigation) in the form attached hereto as Exhibit B, and the Restrictive Covenants (Revegetation) in the form attached hereto as Exhibit C by Buyer.

c. Seller shall execute and deliver to Buyer an Affidavit regarding historical use of the Water Rights, with sufficient information provided by Seller prior to Closing, incorporated into the form attached hereto as Exhibit F.

d. Seller shall execute and deliver to Buyer an affidavit stating that Seller is not a foreign persons, a foreign corporation, a foreign partnership, a foreign trust, or a 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 have delivered to Buyer possession of the Water Rights.

g. Seller shall deliver to Buyer a Release of Deed of Trust or release of all other liens, executed by the holder of any deed of trust or other lien in the Water Rights.

h. Seller and the holders of any deed of trust or other lien in the Land, which lien will not be released pursuant to Section 10, shall execute the Restrictive Covenants (No Irrigation) for the Land satisfactory to Buyer and substantially as shown on Exhibit B, attached hereto and incorporated by this reference herein, that will prohibit the irrigation or other use of water on the Land except as authorized by a valid decree of the District Court for Water Division No. 1, State of Colorado, or a successor court and in accordance with any future water rights applications filed by Buyer.

i. Seller and the holders of any deed of trust or other lien in the Land, which lien will not be released pursuant to Section 10, shall execute Restrictive Covenants (Revegetation) for the Land satisfactory to Buyer and substantially as shown on Exhibit C, attached hereto and incorporated by this reference herein, which will require revegetation of the Land upon written notice from Buyer to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree entered upon the Change of Use Application or another application seeking to change certain water rights from agricultural irrigation purposes to other beneficial purposes.

j. Buyer and Seller shall execute the Irrigation Water Lease defined below in Section 15, in substantially the same form as Exhibit E attached hereto.

k. Seller and Buyer shall each execute and deliver settlement statements, showing adjustments and the payment of costs of the Closing.

l. Each party shall deliver to the other such other documents, certificates, and the like as may be required herein or as may be necessary or helpful to carry out its obligations under this Agreement.

15. LEASE OF IRRIGATION WATER. Seller and Buyer agree that upon Closing, Seller will lease the Water Rights from Buyer for an initial term of ten (10) years after Closing (“Irrigation Water Lease”), which may be renewed by written mutual agreement for five (5) consecutive one (1) year renewal terms. The Buyer shall pay all assessments, charges, and other expenses due and attributable to the Water Rights (the “Annual Lease Amount”) to the Company. The Seller shall annually reimburse the Buyer in full for payment of the Annual Lease Amount. Seller shall also pay the City an annual administrative fee (“Annual Administrative

Fee”) equal to ten percent (10%) of that year’s Annual Lease Amount, provided, however, that the Annual Administrative Fee shall not exceed five-hundred dollars (\$500.00). The form of the Irrigation Water Lease is contained in Exhibit E, Irrigation Water Lease Form.

16. NOT ASSIGNABLE. Except as provided in Section 24 below, this Agreement shall not be assignable by either Party, and any purported assignments shall be void. Except as so restricted, this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties.

17. 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, TAX, AND OTHER COUNSEL BEFORE SIGNING THIS AGREEMENT.

18. TIME OF ESSENCE AND REMEDIES. Time is of the essence hereof. In the event any time period expires 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 hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

a. If Buyer is in Default: Seller may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and Seller may recover such damages as may be proper, or Seller may elect to treat this Agreement as being in full force and effect, and Seller shall have the right to specific performance, damages, or both.

b. If Seller is in Default: Buyer may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Agreement as being in full force and effect, and Buyer shall have the right to specific performance, damages, or both.

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

19. TERMINATION. In the event this Agreement is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to Subsections 6(e) and 3(a).

20. ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL. This Agreement constitutes the entire Agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of any of the terms of this

Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Agreement which, by its terms or nature, is intended to be performed after termination or Closing shall survive the same.

21. SIGNATURES. Signatures may be evidenced by copies transmitted via facsimile or electronic mail. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

22. NOTICE. Any notice or other communication given by any of the parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified below; or (ii) on the date 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 facsimile if telecopied to the number specified below and receipt of such telecopy is acknowledged; or (iv) on the date and at the time shown on the electronic mail (email) if emailed to the email address specified below and no bounce-back email is received within three (3) days; or (v) on the date shown on the delivery acknowledgment provided by the courier if sent by a nationally-recognized overnight courier service (such as Federal Express) that provides evidence of delivery:

If to Seller to: Frederick L. Myers
PO BOX 471
Baggs, WY, 82321-0471
Telephone: 970-583-7466
Email: rdmyers44@yahoo.com

Deborah J. Myers
PO BOX 471
Baggs, WY, 82321-0471
Telephone: 970-583-7466
Email: rdmyers44@yahoo.com

If to Buyer, to: City of Greeley Water and Sewer Department
Attention: Cole Gustafson, Water Resources Administrator II
Water & Sewer Department
1001 11th Ave, 2nd Floor
Greeley, CO 80631
Telephone: 970-350-9815
Facsimile: 970-350-9805
Email: Cole.Gustafson@greeleygov.com

With a copy to:

Greeley City Attorney's Office
Attention: Aaron Goldman, Environmental & Water Resources Attorney
1100 Tenth Street, Suite 401
Greeley, CO 80631
Telephone: 970-350-9757
Facsimile: 970-350-9763
Email: Aaron.Goldman@Greeleygov.com

23. Buyer and HydroSource, Inc. ("Broker") agree that the Broker has brought about the above sale and that for such services the Buyer agrees to pay the Broker a commission pursuant to the agreement between Buyer and Broker. The Broker's commission payment shall not be considered to be earned, due, or payable unless and until title to the Water Rights passes, the Restrictive Covenants (No Irrigation) and the Restrictive Covenants (Revegetation) are fully executed and recorded, and the Agreement is performed in full.

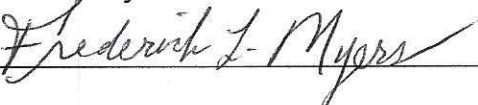
24. **SELLER 1031 EXCHANGE.** At the request of Seller, Buyer shall cooperate with Seller in the achievement of a tax-deferred real estate exchange pursuant to Section 1031 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder. Seller will complete and file the necessary documentation with the Internal Revenue Service to effectuate the exchange. Buyer agrees that, if directed by Seller in writing, Buyer will submit that portion of the Purchase Price to be used to acquire like kind property of Seller, to the qualified intermediary as designated by Seller. Seller shall indemnify and hold Buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from Seller's exchange of property described herein, or resulting from Buyer's submittal of a portion of the Purchase Price to the Seller's designated qualified intermediary. Buyer shall not be required to incur any additional liability or expense in connection with Seller's tax-deferred exchange transaction nor shall Buyer be required to accept title to any real property other than the Property described hereinabove.

25. **WATER AND SEWER BOARD APPROVAL REQUIRED.** THE OBLIGATIONS OF BUYER ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD AS EVIDENCED BY EXECUTION OF THE SUPPLEMENTAL SIGNATURE PAGE BELOW.

26. **NOTICE OF ACCEPTANCE; COUNTERPARTS.** Acceptance must be in writing by Buyer and Seller, as evidenced by Seller's signatures below and Buyer's execution of the supplemental signature page below, and the offering party must receive notice of acceptance pursuant to Section 22. If accepted, this document shall become an Agreement between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete Agreement between the parties.

SELLER:

Frederick L. Myers

By: 

Date: 8/12/2020

Deborah J. Myers

By: Deborah J. Myers

Date: 8/12/2020

**THE FOLLOWING SUPPLEMENTAL SIGNATURE PAGE SHALL BE EXECUTED
BY BUYER SUBSEQUENT TO APPROVAL BY THE CITY OF GREELEY WATER
AND SEWER BOARD PURSUANT TO SECTION 25 HEREINABOVE.**

BUYER'S SUPPLEMENTAL SIGNATURE PAGE

By: _____
Water & Sewer Board Chairman

By: _____
Mayor

APPROVED AS TO SUBSTANCE:

ATTEST:

By: _____
City Manager

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

AS TO AVAILABILITY OF FUNDS:

By: _____
City Attorney

By: _____
Director of Finance

Date Supplemental Signature Page Fully Executed : _____

**EXHIBIT A TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Legal Description of Land)

THE LAND SHALL INCLUDE THE REAL PROPERTY LEGALLY DESCRIBED AS FOLLOWS:

A TRACT OF LAND BEING PART OF THE NW 1/4 OF SECTION 18, TOWNSHIP 7 NORTH, RANGE 67 WEST OF THE 6TH P.M., WELD COUNTY, COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT B OF AMENDED RECORDED EXEMPTION NO. 0705-18-2-RE954, RECORDED JANUARY 8, 1996 AT RECEPTION NO. 2470925, WELD COUNTY CLERK AND RECORDER'S OFFICE.

**EXHIBIT B TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Restrictive Covenants (No Irrigation))

RESTRICTIVE COVENANTS (NO 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"), Frederick L. Myers and Deborah J. Myers ("Declarants"), agree, warrant, and covenant, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarants' own behalf and on behalf of successors in interest, that upon notice from the City, Declarants shall cease irrigation on the lands owned by Declarants and described in Exhibit B attached hereto and made a part hereof (the "Land").

Upon receipt of one hundred and eighty (180) days prior written notice from the City, thereafter Declarants shall not irrigate the Land. The City shall not send said notice during the initial term of that Irrigation Water Lease Agreement dated _____, between the City and Declarants. These covenants shall not prohibit Declarants 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 future water rights applications filed by the City or a successor in interest to the Water Rights; (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 treated potable water supplied by a municipal or quasi-municipal government water provider; (iv) water yielded pursuant to the groundwater right known as the "Sutherland Sump No. 3," as decreed in Case No. W-5675, by District Court, Water Division No. 1, State of Colorado on July 12, 1977, to the extent this right can be operated consistent with the dry-up requirements of a decree entered in any case involving the change, plan for augmentation, or exchange of any of the Water Rights; or (v) water which is not tributary to the South Platte River or any of its tributaries. Unless so irrigated, Declarants agree the Land subject to these covenants shall not be planted with any crops. Subject to the foregoing exceptions, Declarants further covenant and agree to take those actions reasonably necessary to eliminate any consumptive use of water for irrigation purposes on those portions of the Land which were historically irrigated, or such lesser portion thereof as determined by the Water Court in the judgment and decree entered in any case involving the change, plan for augmentation, or exchange of any of the Water Rights.

Any and all fees and costs incurred in any necessary action to enforce these Restrictive Covenants by City, including reasonable attorney fees, shall be paid by Declarants.

The foregoing covenants of Declarants shall burden, attach to, and run with the Land and shall be binding upon Declarants' 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 Water Rights. Declarants warrant and represents 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 Declarants by prepaid U.S. Mail to the Declarants at: Post Office Box 471 Baggs, WY, 82321-0471.

IN WITNESS WHEREOF, the Declarants have executed this instrument on the ____ day of ____
_____, 2020.

Declarants:

By:_____

Name: _____

By:_____

Name: _____

Subscribed under oath before me on _____, _____, by _____
_____ and _____.

My commission expires:_____

Notary Public

**EXHIBIT C TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Restrictive Covenants (Revegetation))

RESTRICTIVE COVENANTS (REVEGETATION)

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado home rule municipality, 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”), Frederick L. Myers and Deborah J. Myers (“Declarants”), agree, warrant and covenant, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarants’ own behalf and on behalf of successors in interest, that upon notice from the City, Declarants shall revegetate the lands owned by Declarants and described in Exhibit B attached hereto and made a part hereof (the “Land”).

Within two and one half (2½) years from receiving written notice from the City or from the expiration or termination of that Irrigation Water Lease Agreement dated _____, between the City and Declarants, whichever date is the later, Declarants shall establish, at Declarants’ expense, a ground cover of plant life, as such is defined in C.R.S. § 37-92-103(10.5) or successor statute, on the undeveloped portions of the Land that had been irrigated to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by the City, or a successor in interest to the Water Rights, from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes, pursuant to C.R.S. § 37-92-305(4.5) or successor statute. Here, “undeveloped portions of the Land” means portions of the Land not occupied by roads, buildings, or other structures, or not otherwise being lawfully irrigated in accordance with the Restrictive Covenants (No Irrigation), dated _____ and recorded at Reception No. _____ in Weld County.

Should Declarants fail to comply with its obligations hereunder, the City shall have the right to come upon the Land and take all measures necessary to accomplish revegetation and/or noxious weed management on the Land, provided that the City shall have the right to receive full reimbursement of all of its expenses of accomplishing such revegetation or weed management from Declarants. Any and all fees and costs incurred in any necessary action to enforce these Restrictive Covenants by City, including reasonable attorney fees, shall be paid by Declarants.

The foregoing covenants of Declarants shall burden, attach to, and run with the Land and shall be binding upon Declarants’ 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 Water Rights. Declarants warrant and represent that such covenants shall entitle the City to the first and prior right to claim credit for the revegetation 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 Declarants by prepaid U.S. Mail to the Declarants at: Post Office Box 471 Baggs, WY, 82321-0471.

IN WITNESS WHEREOF, the Declarants have executed this instrument on the ____ day of ____
_____, 2020.

Declarants:

By:_____

Name: _____

By:_____

Name: _____

Subscribed under oath before me on _____, _____, by _____
_____ and _____.

My commission expires:_____

Notary Public

**EXHIBIT D TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Special Warranty Deed)

SPECIAL WARRANTY DEED
(Frederick L. Myers and Deborah J. Myers)

THIS DEED, is made this ____ day of _____ 2020, by FREDERICK L. MYERS AND DEBORAH J. MYERS, whose address is Post Office Box 471 Baggs, WY, 82321-0471, (“Grantors”) and the CITY OF GREELEY, COLORADO, a Colorado home rule municipality, acting by and through its Water and Sewer Board, whose address is 1000 10th Street, Greeley, Colorado 80631 (“Grantee”).

WITNESSETH, that Grantors, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, Grantee’s heirs and assigns forever, all of the water rights represented by the following shares (“Water Rights”):

one-half (1/2) share of stock in the Water Supply and Storage Company (represented by Share Certificate No. _____), which has historically irrigated the real property described on Exhibit A attached hereto. The Water Rights shall also include any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Water Rights. The Water Rights shall not include any interest in any wells, well rights, well permits, whether tributary, nontributary, or not nontributary, nor shall it include any interest in the groundwater right known as the “Sutherland Sump No. 3,” as decreed in Case No. W-5675, by District Court, Water Division No. 1, State of Colorado on July 12, 1977.

TOGETHER with all beneficial right, title and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates and all other assets, rights, title or interests represented by said shares;

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of the Grantors, either in law or equity, of, in, and to the above bargained Water Rights, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said Water Rights above bargained and described with the appurtenances, unto the Grantee, Grantee’s successors and assigns forever. The Grantors, for Grantors, Grantors’ successors and assigns, do covenant and agree that Grantors shall and will warrant and forever defend the above bargained Water Rights in the quiet and peaceable possession of the Grantee, Grantee’s successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantors.

IN WITNESS WHEREOF, the Grantors have executed this Deed on the date set forth above.

GRANTORS:

FREDERICK L. MYERS AND DEBORAH J. MYERS,

By:_____

Name: _____

By:_____

Name: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this ____ day of _____ 2020,
by_____ and _____.

Witness my hand and official seal.

Notary Public
My commission expires: _____

IRRIGATION WATER LEASE AGREEMENT

This IRRIGATION WATER LEASE AGREEMENT (“Agreement”) is entered into this ____ day of _____ 2020, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water and Sewer Board, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 (“City”), and Frederick L. Myers and Deborah J. Myers, whose address is PO BOX 471 Baggs, WY, 82321-0471 (collectively, “Lessee”).

Recitals

WHEREAS, the City owns those certain water rights represented by one-half (1/2) share of stock in the Water Supply and Storage Company (“Water Rights”); and

WHEREAS, the Lessee desires to lease the Water Rights from the City for agricultural irrigation on a parcel of real property consisting of approximately 137 acres, known as 39980 County Road 13 Weld, CO 80524, and more particularly described in Exhibit A, attached hereto and incorporated herein by reference (“Property”);

WHEREAS, the City is willing 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 the Lessee, and the 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 term of this Agreement begins on the date of mutual execution and ends on November 1, 2030 (“Initial Term”). At the end of this Initial Term, this Agreement shall expire. The City and Lessee may renew this Agreement for five (5) one (1) year renewals (“Renewal Term”), by mutual written agreement. The Lessee may terminate this Agreement during the Initial Term, prior to any irrigation season, for any reason by delivering one year advance written notice to the City. The City may terminate this Agreement during the Initial Term, prior to any irrigation season, by delivering advance written notice to Lessee on or before November 1 of the preceding calendar year, if the City determines in its sole discretion that the Water Rights are needed for any municipal purpose, or if the City is required to cease irrigation

with the Water Rights by the terms and conditions of a water court decree. Additionally, refer to Section 12 for provisions relating to termination for cause.

3. Annual Lease Amount and Administrative Fee. The Lessee shall pay to the City an Annual Lease Amount equal to all normal assessments, charges, and other expenses due and attributable to the Water Rights paid by the City to the Water Supply and Storage Company, excepting any special assessments. The Annual Lease Amount shall not be reduced to reflect rebates or other credits attributable to leasing transmountain return flows associated with the Water Rights. The Lessee has no right to claim, use, or rent such transmountain return flows. Neither the Lessee, nor any subsequent Lessee, shall have any right to any rebates, credits, or other payments from the City or the Water Supply and Storage Company for the creation, use, reuse, successive use, lease, or sale of such transmountain return flows. Lessee shall also pay to the City an Annual Administrative Fee equal to ten percent (10%) of that year's Annual Lease Amount, provided, however, that the Annual Administrative Fee shall not exceed five-hundred dollars (\$500.00). 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, whichever comes first. 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. Notwithstanding Section 3, Lessor shall pay assessments to the Lakeside Lateral Company.

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 Rights for any other uses. 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 Water Supply and Storage Company. Lessee shall comply with Title 14 of the Greeley Municipal Code, and all rules, regulations, and laws 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 consistent with normal irrigated agricultural practices, and shall undertake no action that could be construed as abandonment of the Water Rights or could cause in part or in whole a reduction in the use of the Water Rights. Lessee shall provide advance written notice to the City of at least thirty days if they no longer intend to irrigate the entirety of the Property with the Water Rights. Absent written consent from the City, Lessee shall not use any water, water rights, ditches, ditch rights, wells, well rights, well permits, carriage rights, reservoirs, or reservoir rights to irrigate the Property, other than water yielded pursuant to the Water Rights.

5. Affidavit of Beneficial Use and Water Court Proceedings. Lessee agrees to deliver to the City, on or before May 15 of each calendar year, a completed Historical Use Affidavit and Questionnaire, in the form attached hereto and incorporated herein by reference 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 Lease Agreement. Lessee agrees to 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, unless Lessee has obtained City's prior written consent. 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 rent, sublet, or 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. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. 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 their use of the Water Rights on the Property.

8. No Guarantee of Yield. 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 farm ditches, headgates, center pivot, pivot pond, and other personal property necessary to deliver water pursuant to the Water Rights at Lessee's own cost and expense. Lessee shall make all repairs and restorations necessary to keep the farm ditches, headgates, center pivot, pivot pond, and other personal property in good working condition during the term of this Agreement.

10. Indemnification; Immunity. Lessee agrees to exercise Lessee's rights under this Agreement at Lessee's 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 to 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, (2) hand-delivered at the addresses set forth above, or (3) sent via email to City at alex.tennant@greeleygov.com, with a copy to cityattorney@greeleygov.com, and to Lessee at rdmyers44@yahoo.com. 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 Paragraphs 3, 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 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. Revegetation and Cessation of Irrigation. Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property with the Water Rights, except as expressly allowed by the Restrictive Covenants (No Irrigation), attached hereto as Exhibit C and incorporated herein by reference, and the Restrictive Covenants (Revegetation), attached hereto as Exhibit D and incorporated herein by reference.

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 permissible successors in interest.

15. 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.

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 electronic means. The parties agree to accept and be bound by signatures hereto delivered by electronic means.

20. Recording. Lessee shall not record this Agreement in the real property records of any jurisdiction. This Agreement is not intended to run with the land as a covenant burdening real property.

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

By: _____

By: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 20__ by _____ and _____, whose signature appear above as the Lessee.

Witness my hand and official seal.

Notary Public

My commission expires:

**EXHIBIT F TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Historical Use Affidavit)

AFFIDAVIT OF FREDERICK L. MYERS

STATE OF COLORADO)
)ss.
COUNTY OF WELD)

I, Frederick L. Myers (“Affiant”), being of lawful age and first duly sworn upon oath, state and aver as follows:

1. I am a resident of the State of Colorado.
2. My address is [need physical address].
2. I have farmed a parcel of property consisting of approximately 137 acres further described in Exhibit A hereto (the “Land”).
3. I own one-half (1/2) share of stock in the Water Supply and Storage Company (represented by Share Certificate No. _____), (the “Irrigation Share”). I have applied the Irrigation Share to irrigate by [method] of irrigation, [number] acres of the Land since approximately [date] (the “___ Acres”).
4. The Irrigation Share has been delivered to the Land by [describe conveyance structures].
5. [description of whether the Irrigation Share was sufficient to supply all of the ___ Acres].
6. [Description of crops grown]
7. [Season of Use Information for each of the shares]
8. [Other sources of water on the lands]
10. Further Affiant sayeth not.

Dated this _____ day of _____, 2020.

Frederick L. Myers

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____ 2020, by _____.

Witness my hand and official seal.

Notary Public
My commission expires:

AFFIDAVIT OF DEBORAH J. MYERS

STATE OF COLORADO)
)ss.
COUNTY OF WELD)

I, Deborah J. Myers (“Affiant”), being of lawful age and first duly sworn upon oath, state and aver as follows:

1. I am a resident of the State of Colorado.
2. My address is [need physical address].
2. I have farmed a parcel of property consisting of approximately ____ acres further described in Exhibit A hereto (the “Land”).
3. I own one-half (1) share of stock in the Water Supply and Storage Company (represented by Share Certificate No. _____), (the “Irrigation Share”). I have applied the Irrigation Share to irrigate by [method] of irrigation, [number] acres of the Land since approximately [date] (the “____ Acres”).
4. The Irrigation Share has been delivered to the Land by [describe conveyance structures].
5. [description of whether the Irrigation Share was sufficient to supply all of the ____ Acres].
6. [Description of crops grown]
7. [Season of Use Information for each of the shares]
8. [Other sources of water on the lands]
10. Further Affiant sayeth not.

Dated this _____ day of _____, 2020.

Deborah J. Myers

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____ 2020, by _____.

Witness my hand and official seal.

Notary Public
My commission expires:

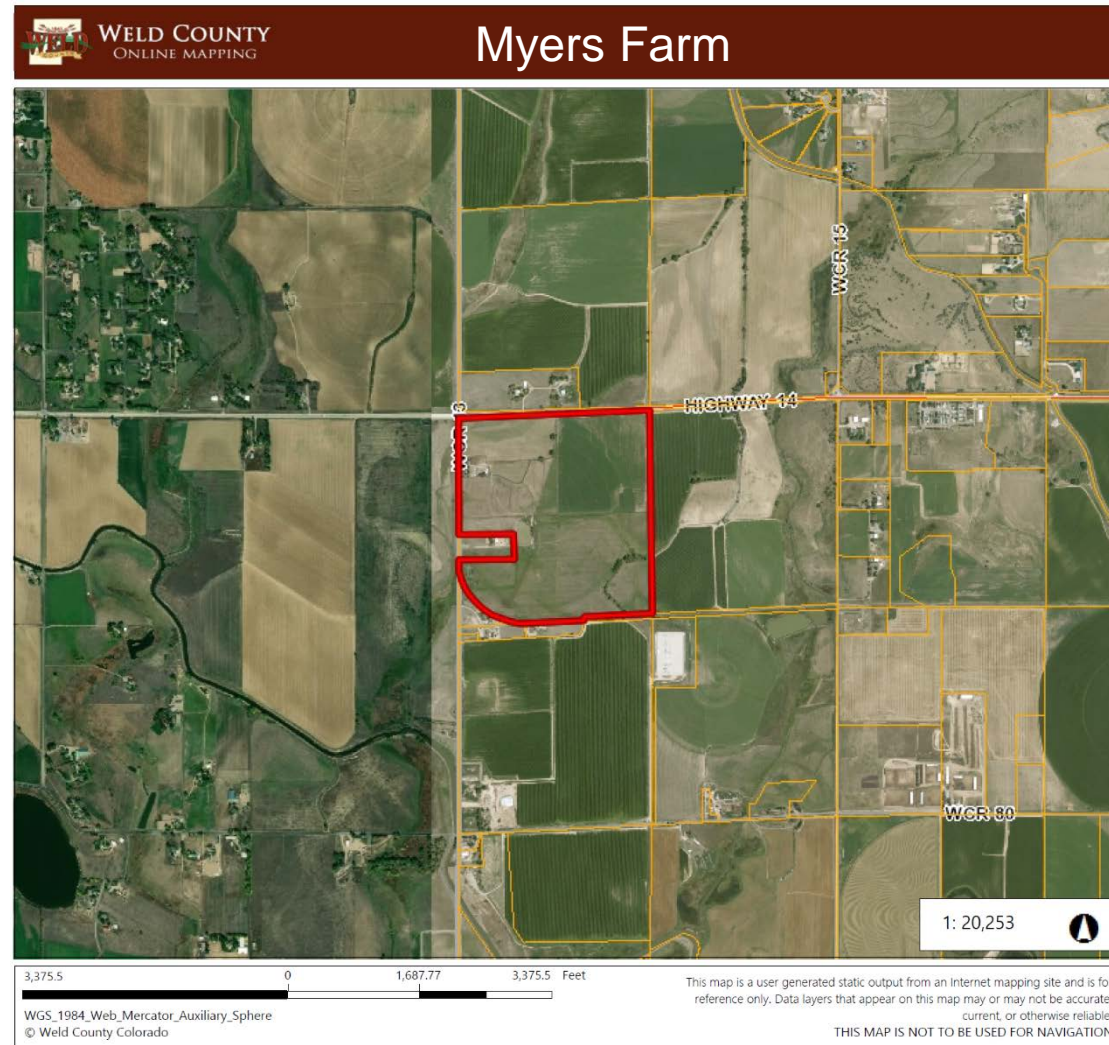


Water Rights Acquisition Myers (WSSC)

August 19th, 2020



Purchase & Sale Overview



Purchase & Sale Overview

- Water Only Purchase
 - ½ shares of Water Supply and Storage Company (WSSC)
- Potable supply
- Lease Back
 - 10 year primary lease back of water rights that may be extended for up to 5, 1-year terms by mutual agreement was part of negotiation.
- Dry up and revegetation covenants are included
- Broker commission
- Total Purchase price of \$1,050,000.00



Recommendation

W&S staff recommend the acquisition of the one-half (1/2) shares of WSSC in accordance with the water acquisition strategies set forth in the Department's Master Plan and Future Water Account Plan



Questions?



WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 10

TITLE: UPDATE ON DROUGHT AND EMERGENCY
 PLAN REVISIONS

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

Greeley's current Drought Emergency Plan is more than 15 years old. Since that time a lot has changed including a decline in water use per account, a re-examination of future water needs and system drought performance, and the conversion to a water budget rate structure for single-family residential customers. Therefore, a re-evaluation of the Drought Emergency Plan is necessary to ensure responsible water supply planning. Staff will present recommended revised restrictions to the Drought Emergency Plan which include using the Water Budget as a drought tool.

GREELEY DROUGHT PLAN UPDATE

Prepared by:

Doug Jeavons

Managing Director

August 2020

www.bbcresearch.com

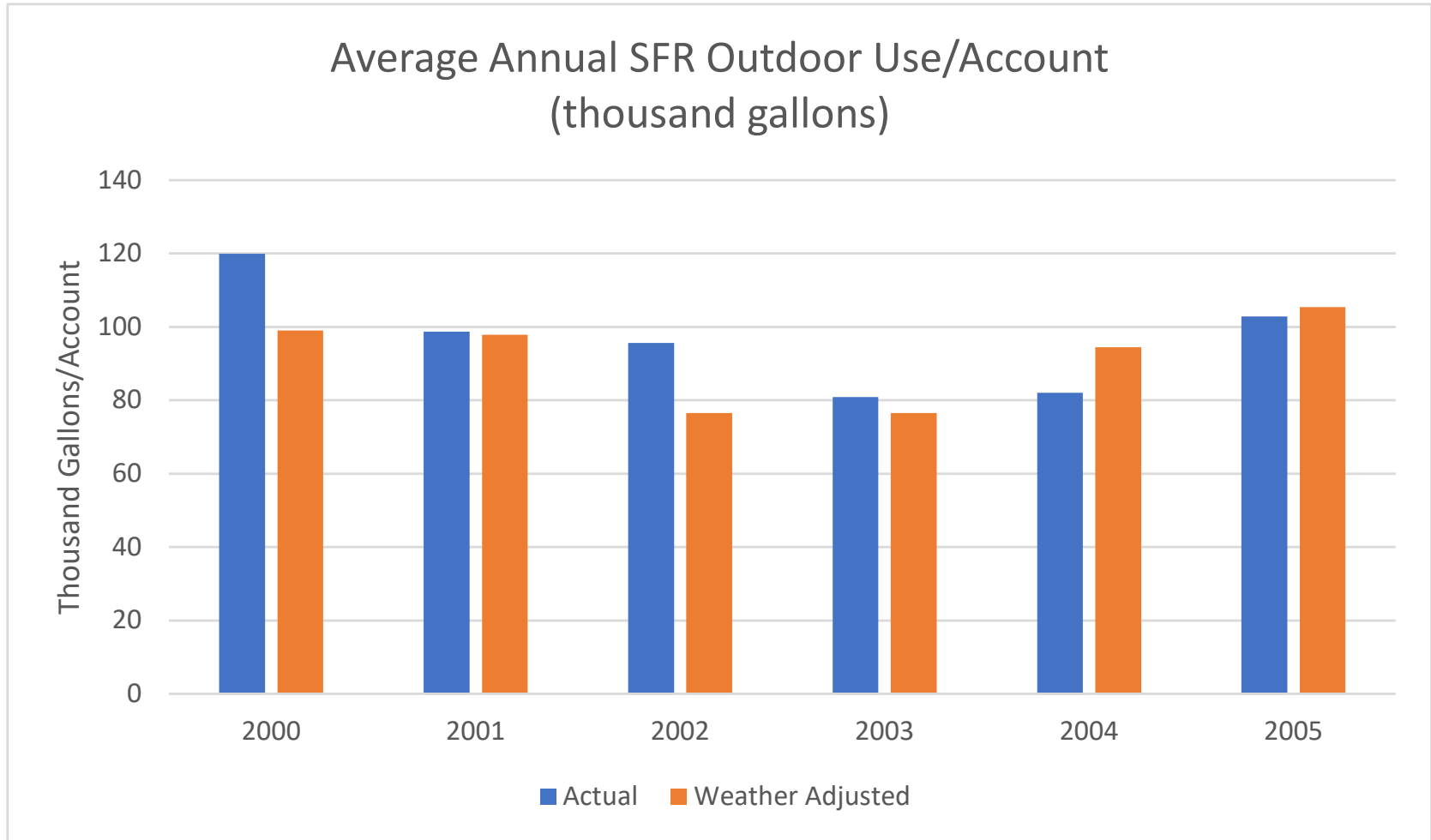
Need for an Updated Drought Plan

- Greeley's current drought plan is more than 15 years old
- Since that time, a lot has changed:
 - Water use per account has declined substantially
 - Greeley has re-examined its future water needs, and system drought performance, as part of the Milton Seaman Revised Alternative Screening Process
 - Greeley converted to water budget-based rates for single family residential customers in 2017

Past 20 Years of Watering Limitations in Greeley

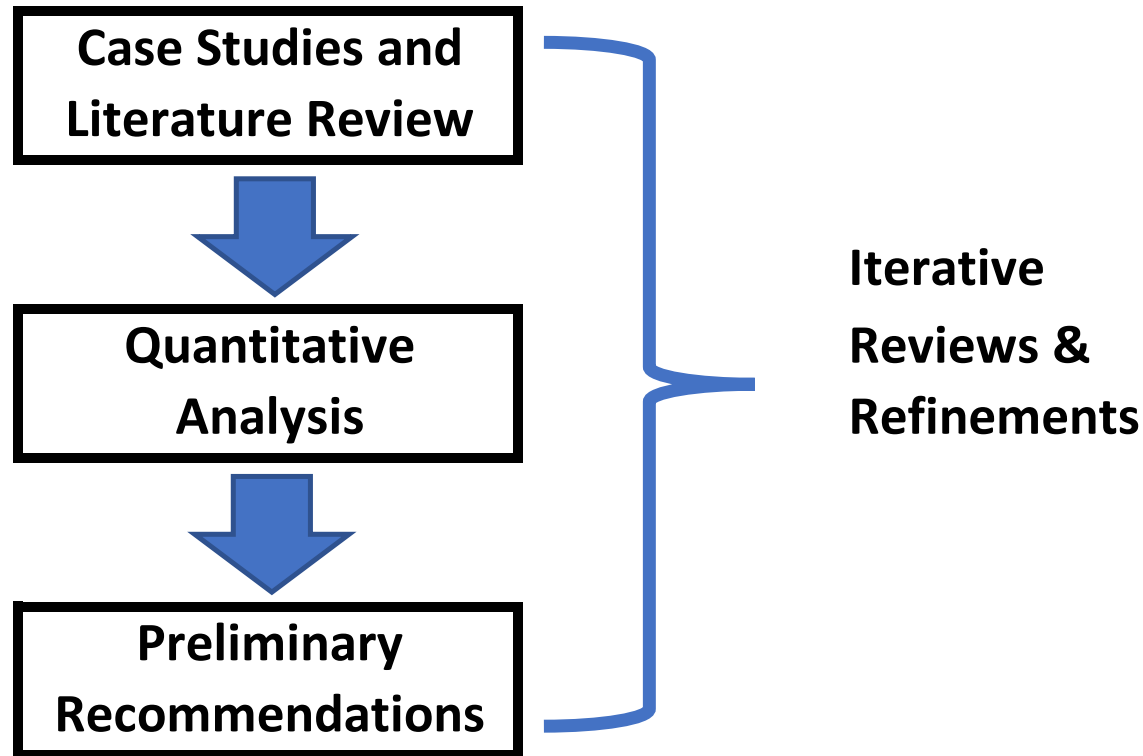
Time Period	Watering Limitations (Changes shown in Bold)
2000-2001	All Customers: Every other day All Customers: No watering 1 PM to 5 PM
2002	All Customers: Voluntary, once every three days, July 13 to end of season All Customers: No watering 1 PM to 5 PM
2003	All Customers: No watering Jan 1. to April 15 All Customers: 1 day per week April 16 through May 15 All Customers: 2 days per week May 16 through September 15 All Customers: 1 day per week September 16 through October 15 All Customers: No watering after Oct. 15 All Customers: No watering 10 AM to 6 PM
2004	All Customers: No watering Jan 1. to April 15 All Customers: 1 day per week April 16 through May 15 All Customers: 2 days per week May 16 through June 14 All Customers: 3 days per week June 15 to end of season All Customers: No watering 10 AM to 6 PM
2005-2017	All Customers: 3 days per week, No watering Noon to 5 PM
2017-2019	Single Family Residential: Water Budgets Other Classes: 3 days per week, No watering Noon to 5 PM

Historically, Greeley's Customers Have Responded When Needed



Source: Previous analyses for demand model development. Based on Greeley billing records; Monthly ET and precipitation at Greeley West reported by Northern Water.

Process for Developing a New Drought Plan



Case Studies and Literature Reviews

Other Utilities with Water Budget Rates

Utility	Drought Plan Reviewed	Interview Conducted
Colorado Utilities		
City of Boulder	Yes	Yes
Castle Pines N. Metro District	Yes	
Town of Castle Rock	Yes	Yes
Centennial WSD	Yes	Yes
California Utilities		
Western Municipal WD	Yes	Yes
Santa Margarita WD	Yes	
City of Santa Cruz	Yes	
Rancho WD	Yes	Yes
Palmdale WD	Yes	
Moulton Niguel WD	Yes	
Las Virgenes WD	Yes	
Irvine Ranch WD	Yes	
Elsinore Valley MWD	Yes	Yes
El Toro WD	Yes	
Eastern Municipal WD	Yes	Yes
City of Corona	Yes	
Coachella Valley WD	Yes	Yes

Literature Reviews

- Price Elasticity of Demand
- Financial Resilience Strategies
- Impacts on Landscaping Industry

Case Study Findings*

- California utilities cited WB rates as key component of response to recent (2014) drought
- Utilities used a mix of strategies:
 - Reducing WBs
 - Increasing rates for “inefficient” tiers and/or penalty surcharges
 - Mix of other measures (public information campaigns, watering restrictions, limitations/elimination of some uses, leak and irrigation audits, etc.)
- Most focused primarily on single family residential outdoor use
- Utilities noted concerns over equity, economic impact and revenue impacts

*More detailed technical memorandum available.

Non Water-budget Demand Reduction Measures



Flexibility is important: All drought plans contain multiple measures to reduce demand at each drought level

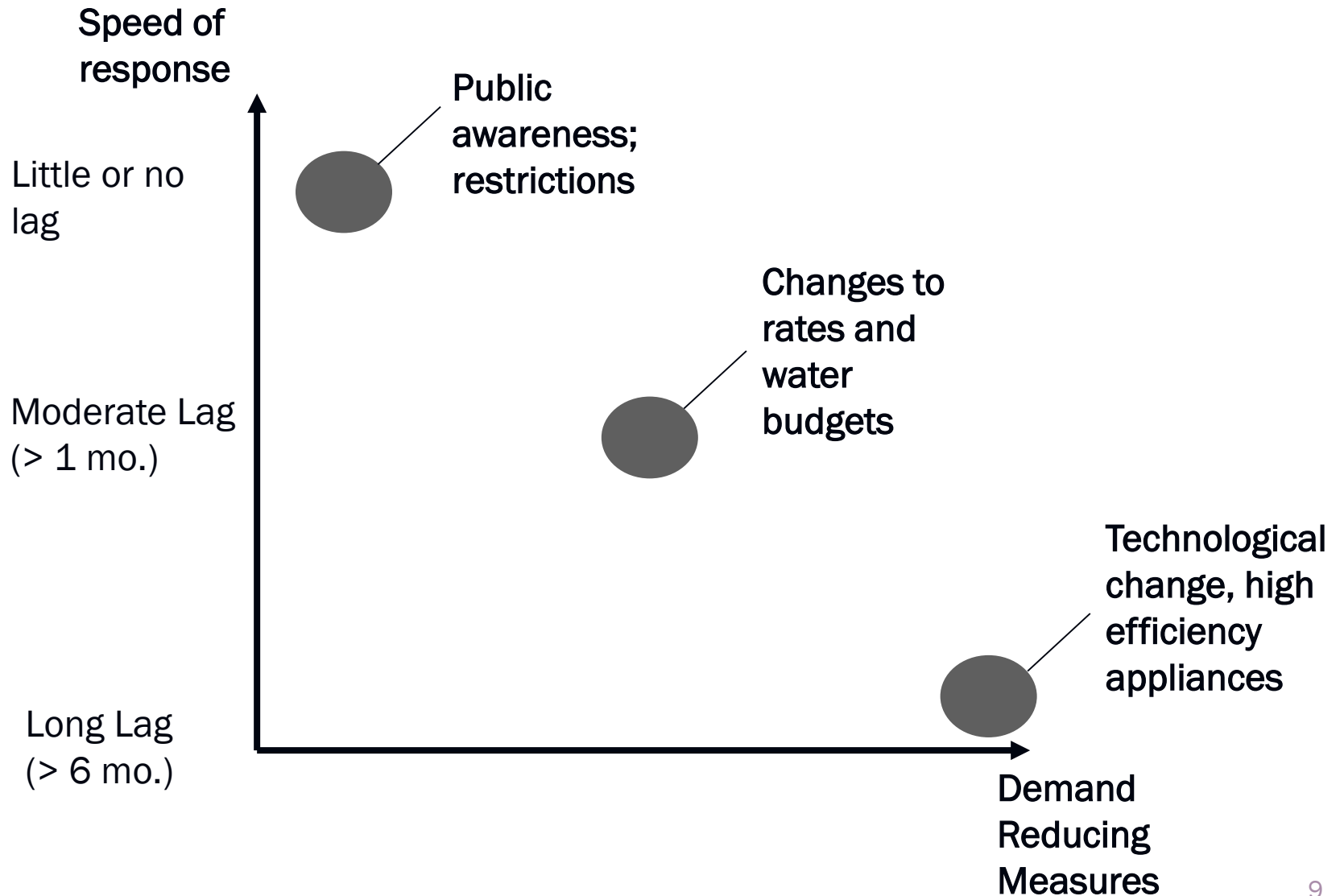
- Sequence of measures was not as important

Public awareness is the most effective measure for immediate reductions in use based on interviews with utilities



Voluntary and mandatory restrictions are also effective for helping water users understand how to use water more efficiently

Short run vs. long run response



Drought Triggers, Levels and Target Reductions

- Currently large gap between supply and demand (~20,000 AF)
- Increasing Target Storage to 22,000 AF
 - 20-year average demand (2009-2019)
- Changing the definition of Target Storage
 - Amount of water needed to meet total demand for an entire year
 - Determined in April after CBT quota is declared by projecting high demands and low yields for next 12 months
- Ongoing re-evaluation

Drought Triggers, Levels and Target Reductions

- Develop % water use reductions in each drought level to create enough water savings to rebuild to Target Storage Volume of 22,000 AF
- Reductions and restrictions are for *outdoor* irrigation only
- Recommending a 2 year recovery period
 - Minimizes restrictions and lifestyle changes/Easier on our customers
 - Smooths the demand curve and impacts to revenue
- Savings assumes single family customers are using 100% of their water budgets
- Equitable: same % reductions for single family residential, multi-family, commercial and industrial

Drought Triggers, Levels and Target Reductions

Single-Family Residential Customers on Water Budget Outdoor use (AF)=6,200

Drought Level	Projected April 1st Storage (AF)	AF needed to be made up by SFR (40% of City's total demand)	Proposed Reduction to Outdoor WB	2 year Expected Savings from Restrictions
Projected April 1 storage	22,000	0	0%	
Level 1: Mild	18,700	1,320	15%	1,860
Level 2: Moderate	16,500	2,200	25%	3,100
Level 3: Severe	13,200	3,520	50%	6,200
Level 4: Catastrophic	11,000	4,400	70%	8,680

Commercial/Industrial Customers*

Outdoor use (AF)=4,410

Drought Level	Projected April 1st Storage (AF)	AF needed to be made up by Commercial	Target Reduction in Outdoor Use	2 year Expected Savings from Restrictions
Projected April 1 storage	22,000	0	0%	
Level 1-Mild	18,700	1,440	15%	1,323
Level 2-Moderate	16,500	2,400	25%	2,205
Level 3-Severe	13,200	2,600	50%	4,410
Level 4-Catastrophic	11,000	2,320	70%	6,174

*these do not apply to our large industrial users

Drought Triggers, Levels and Target Reductions

Single-Family Residential Customers on Water Budget

Drought Level	Recommended Watering Restrictions*	Rate Increase	Affect to lawn
Normal Year	none	none	none
Level 1: Mild	Public awareness and recommend no irrigation before May 1 or after September 30	none	Little to no effect.
Level 2: Moderate	Irrigation April through October @ 1" per week	none	Lawns will look stressed during hottest parts of the season
Level 3: Severe	Early and late irrigation with no watering for July OR once a week watering to promote deeper soaking	25% for all tiers	Lawns will be stressed much of the season with trees and shrubs competing for water resources. Watering early allows turf to remain healthy through a dry period and watering in the fall will help recovery moving into winter. Late helps maintain the health going into the
Level 4: Catastrophic	No irrigation June 15- August 15	35% for all tiers	Lawns will remain stressed most of the season and those with shallow root systems will likely die

Commercial/Industrial Customers*

Drought Level	Recommended Watering Restrictions*	Rate Increase	Affect to lawn
Normal Year	none	none	none
Level 1: Mild	Public awareness and recommend no irrigation before May 1 or after September 30	none	Little to no effect.
Level 2: Moderate	Irrigation April through October @ 1" per week	none	Lawns will look stressed during hottest parts of the season
Level 3: Severe	Early and late irrigation with no watering for July OR once a week watering to promote deeper soaking	25% for all tiers	Lawns will be stressed much of the season with trees and shrubs competing for water resources. Watering early allows turf to remain healthy through a dry period and watering in the fall will help recovery moving into winter. Late helps maintain the health going into the
Level 4: Catastrophic	No irrigation June 15- August 15	35% for all tiers	Lawns will remain stressed most of the season and those with shallow root systems will likely die

*these do not apply to our large industrial users

Drought Triggers, Levels and Target Reductions

- Equitable among all customer classes
 - Managing perception with outreach and education will be important
 - If single family residents stay within the budget they will pay less than a normal year
 - Staff recommends meeting with large industrial customers to determine solutions for water savings
- This approach provides customers a suite of tools to achieve reductions
- Ability to communicate the affects on lawns
- Provides a target to aim for but acknowledge flexibility is important because customers response is unpredictable

Equity Considerations



- Many utilities focus on just residential outdoor use during drought
- If CII customer use is reduced, it happens at severe drought stages
- Exception: Boulder reduces budgets across customer classes at the same time (only utility we spoke to that does this)

Financial Impacts on Customers

- Single Family Residential (SFR)

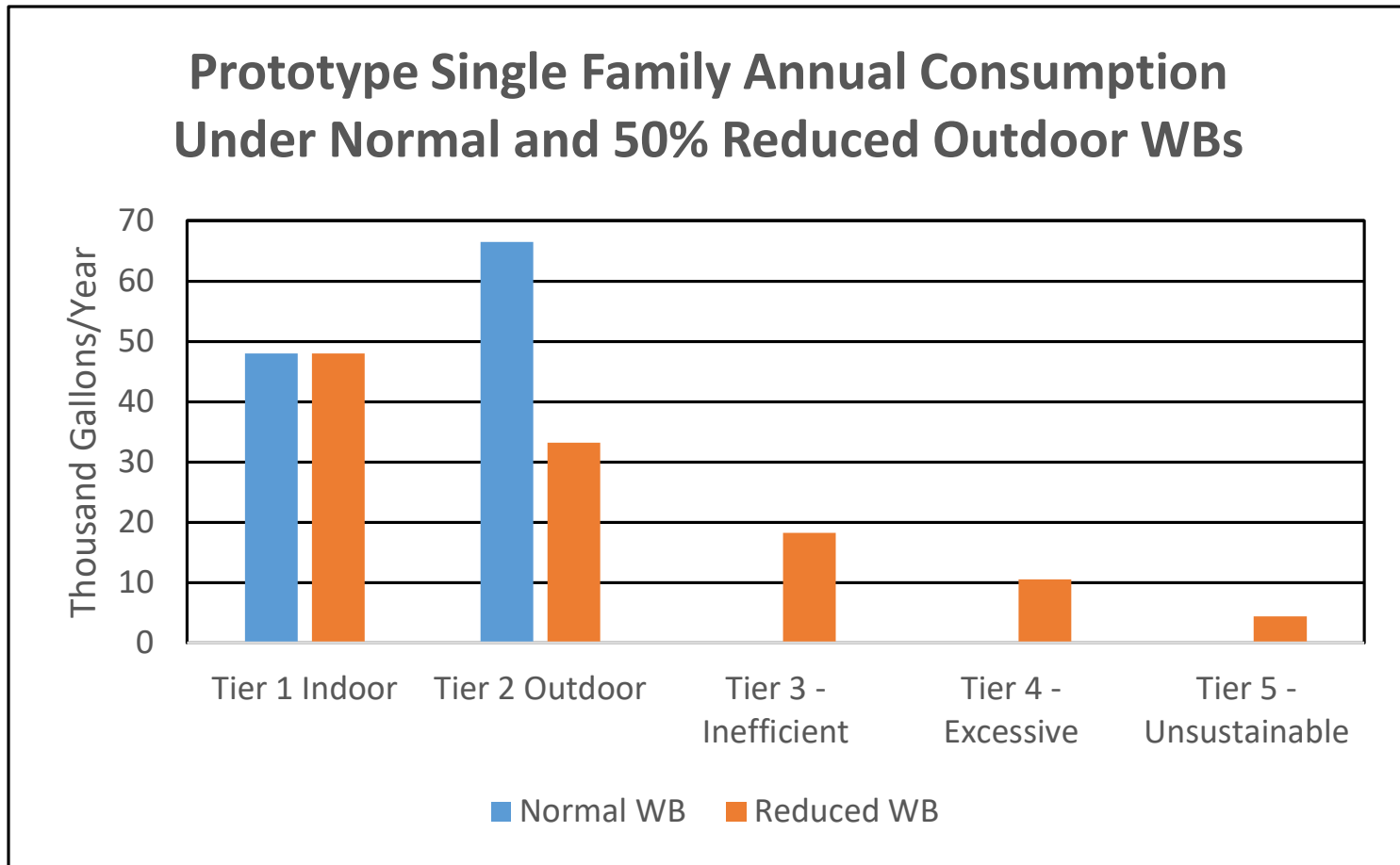
- Combination of reducing outdoor water budgets and increasing rates for outdoor use sends *strong financial signal*
- SFR customers would be penalized more if they don't reduce their use, and rewarded more if they do achieve reduction goals

- Commercial and Multifamily (MFR)

- Rate increases are more of a *blunt instrument* – would apply to indoor use as well as outdoor use
- Different proportions of outdoor use result in different financial effects for these classes

Customer Financial Impacts: Reducing WBs

If Water Budgets are reduced – Customers will pay more to use the same amount of water as part of their usage moves into higher tiers



Customer Financial Impacts: Rate Increase + Reduced WBs (if Customers Do Not Reduce Outdoor Water Use)

Metrics		Baseline	Drought Stages			Change from Baseline		
			Level 2*	Level 3**	Level 4***	Level 2	Level 3	Level 4
Average Monthly Bill -- Irrigation Season								
Single Family	(per household)	\$80	\$83	\$105	\$128	\$3	\$26	\$49
Muti-Family	(per household)	\$30	\$30	\$36	\$39	\$0	\$7	\$10
Commercial	(per account)	\$284	\$284	\$351	\$378	\$0	\$67	\$94
Average Annual Bill								
Single Family	(per household)	\$709	\$730	\$889	\$1,050	\$22	\$180	\$341
Muti-Family	(per household)	\$304	\$304	\$373	\$401	\$0	\$69	\$97
Commercial		\$2,774	\$2,774	\$3,416	\$3,673	\$0	\$643	\$900

*25% reduction in SFR outdoor water budgets. No other rate changes.

**50% reduction in SFR outdoor water budgets and 25% rate increase for all three customer classes.

***70% reduction in SFR outdoor water budgets and 35% rate increase for all three customer classes.

Bills under drought stages reflect baseline consumption levels assuming no reductions in use in response to drought measures.

Customer Financial Impacts: If Target Reductions Achieved

Metrics		Baseline	Drought Stages			Change from Baseline		
			Level 2*	Level 3**	Level 4***	Level 2	Level 3	Level 4
Average Monthly Bill -- Irrigation Season								
Single Family	(per household)	\$80	\$67	\$65	\$56	(\$12)	(\$15)	(\$24)
Muti-Family	(per household)	\$30	\$27	\$30	\$29	(\$3)	\$0	(\$0)
Commercial	(per account)	\$284	\$250	\$265	\$248	(\$34)	(\$19)	(\$36)
Average Annual Bill								
Single Family	(per household)	\$709	\$622	\$625	\$568	(\$87)	(\$83)	(\$141)
Muti-Family	(per household)	\$304	\$285	\$325	\$330	(\$19)	\$21	\$26
Commercial		\$2,774	\$2,533	\$2,753	\$2,697	(\$241)	(\$21)	(\$76)

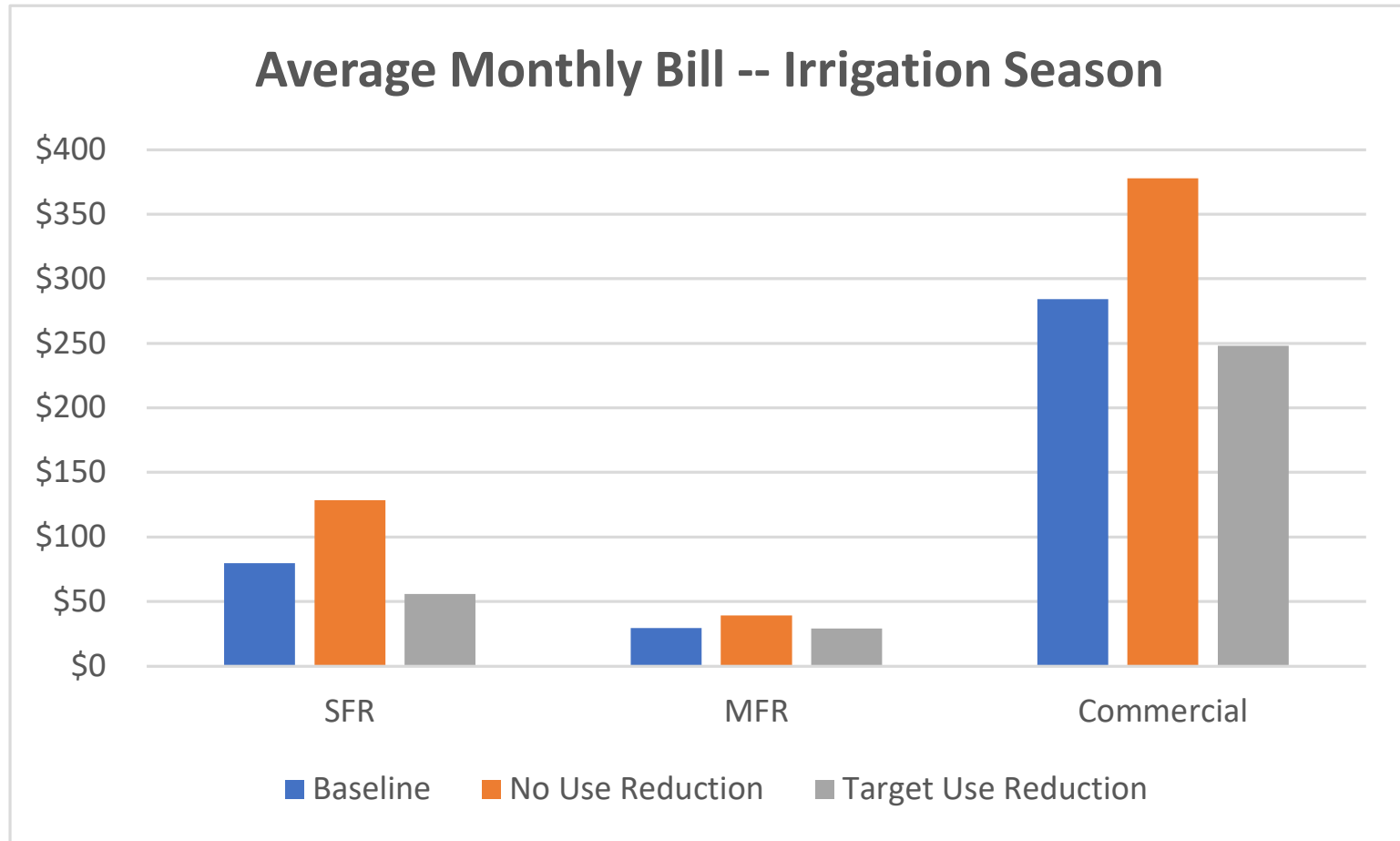
*25% reduction in SFR outdoor water budgets. No other rate changes.

**50% reduction in SFR outdoor water budgets and 25% rate increase for all three customer classes.

***70% reduction in SFR outdoor water budgets and 35% rate increase for all three customer classes.

Assumes customers reduce outdoor use to meet targets under Level 3 and Level 4 drought response plan.

Illustration of Drought Response Plan Effects on Irrigation Season Bills by Customer Class – Stage 4 Catastrophic Drought



Financial Impacts on Greeley Water

- If customers meet the drought response savings goals, Greeley's revenues will decline
- Revenue decline in more severe drought levels (Level 3 & Level 4) would be substantially mitigated by the proposed rate increases
- Overall, revenues likely to be reduced by:
 - \$240,000 to \$630,000 per month during irrigation season
 - \$1.6 to \$3.0 million per year during drought response (-4% to -8% of baseline)
 - Absent the rate increases, revenues could decline by as much as -21% of baseline under Level 4 drought conditions

Potential Options to Mitigate Financial Impacts on Greeley Water & Sewer

- Rate increases during drought – already assumed for Level 3 (25%) and Level 4 (35%)
- Additional surcharge during irrigation season – maybe overly punitive on top of rate increases?
- Establish drought emergency reserve – likely best option?

Concluding Thoughts ...

- Water budgets are a great tool to help customers manage their water use and save water for the City
 - Unique in Colorado
- Water budgets — as well as public awareness campaigns, financial incentives and use restrictions — are proven approaches in emergency conditions
- But, how quickly, and how much, customers will respond to these approaches is not certain
- As emphasized by interviews with other water providers, flexibility in the drought plan and ability to adapt to changing circumstances are essential

Potential Next Steps

- Follow-up presentation to W&S Board in September
- Prepare Drought Emergency Plan document (August-October)
- Board approval of plan and code changes; recommendation to Council (October)
- 1st reading to Council (November)
- Council Approval (December)

GREELEY DROUGHT PLAN UPDATE

SUPPLEMENTAL SLIDES

Financial Impacts on Greeley Water & Sewer (Assuming outdoor use reduced to targets)

Dollars in Millions

Metric/Customer Class	Baseline	Drought Stage Financial Impact			
		Level 1	Level 2	Level 3*	Level 4**
Irrigation Season Monthly Revenue					
Single Family	\$1.84	(\$0.17)	(\$0.29)	(\$0.34)	(\$0.56)
Multifamily	\$0.47	(\$0.03)	(\$0.04)	\$0.00	(\$0.01)
Commercial	<u>\$0.53</u>	<u>(\$0.04)</u>	<u>(\$0.06)</u>	<u>(\$0.04)</u>	<u>(\$0.07)</u>
Total	\$2.84	(\$0.24)	(\$0.39)	(\$0.37)	(\$0.63)
Average Annual Revenue					
Single Family	\$16.34	(\$1.20)	(\$2.00)	(\$1.92)	(\$3.25)
Multifamily	\$4.87	(\$0.18)	(\$0.29)	\$0.34	\$0.41
Commercial	<u>\$5.16</u>	<u>(\$0.27)</u>	<u>(\$0.45)</u>	<u>(\$0.04)</u>	<u>(\$0.14)</u>
Total	\$26.36	(\$1.65)	(\$2.74)	(\$1.62)	(\$2.99)

Notes:

*Level 3 assumes 25% rate increase for SFR outdoor budget, MFR and commercial.

**Level 4 assumes 35% rate increase for SFR outdoor budget, MFR and commercial.

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 11

TITLE: TRANSFER TO EVANS CUSTOMERS TO
GREELEY UPDATE

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

Currently, the City of Greeley provides potable water to 17 customers that are now in the Evans service area. It is the interest of both Greeley and Evans to transfer these customers to Evans in exchange for an amount of raw water dedication to Evans. This will provide large cost and staff time savings to Greeley by no longer needing to repair and maintain the aging infrastructure associated with the delivery of water to these customers. Staff will present recommended terms for an agreement to transfer these customers.

Greeley customers in Evans service area

Presented by Jennifer Petrzelka
Water Resources Operations Manager

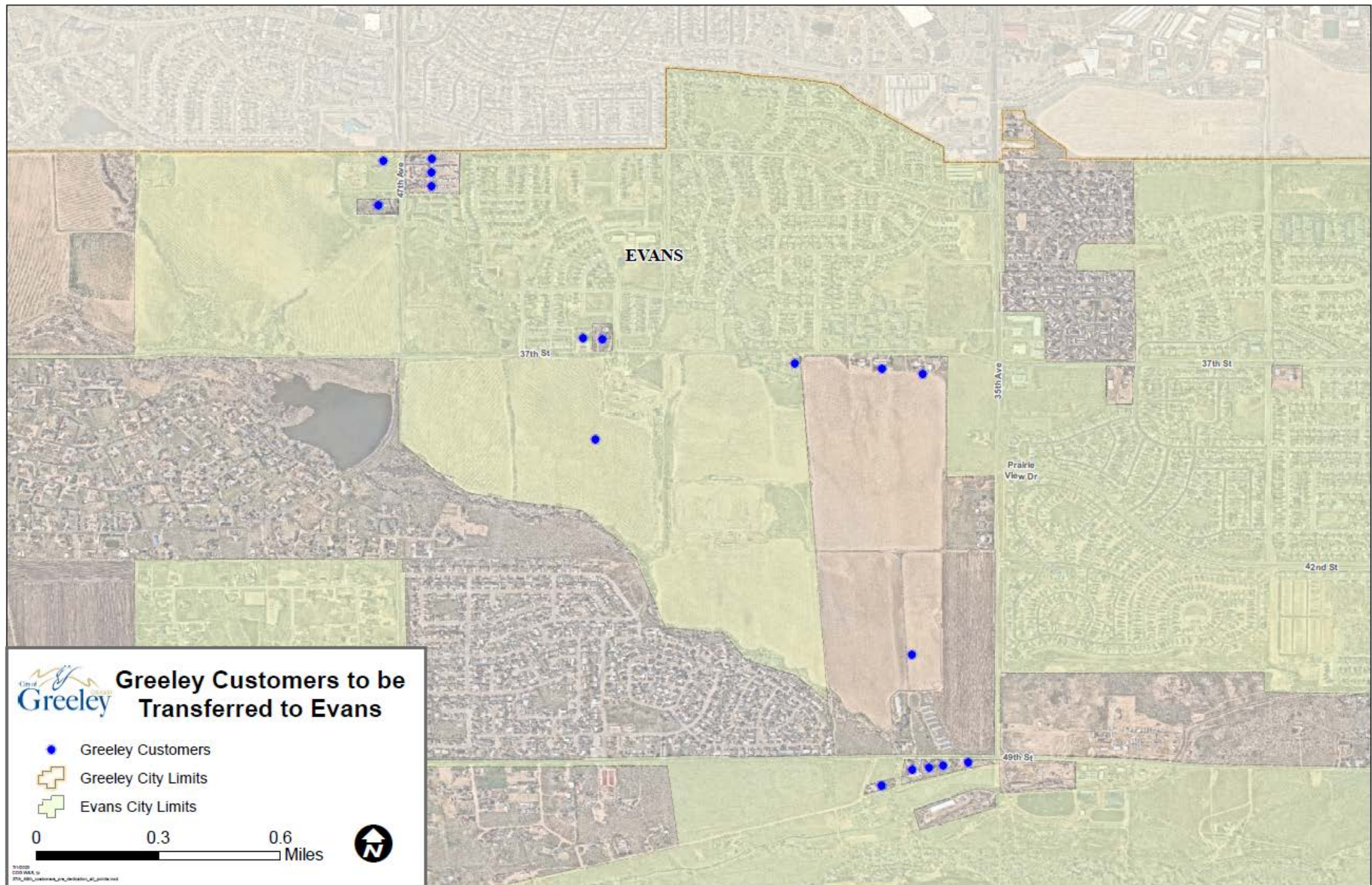
August 19, 2020



Background

- 17 customers were issued Greeley taps in the 1960's through 1990
 - 37th Street, 49th Street, and 47th Avenue
 - At the time the customers were closer to Greeley's service area than Evans
- These customers are now within Evans service area
 - 12 customers are being provided water by Evans
 - No raw water dedication has been provided to Evans





Background

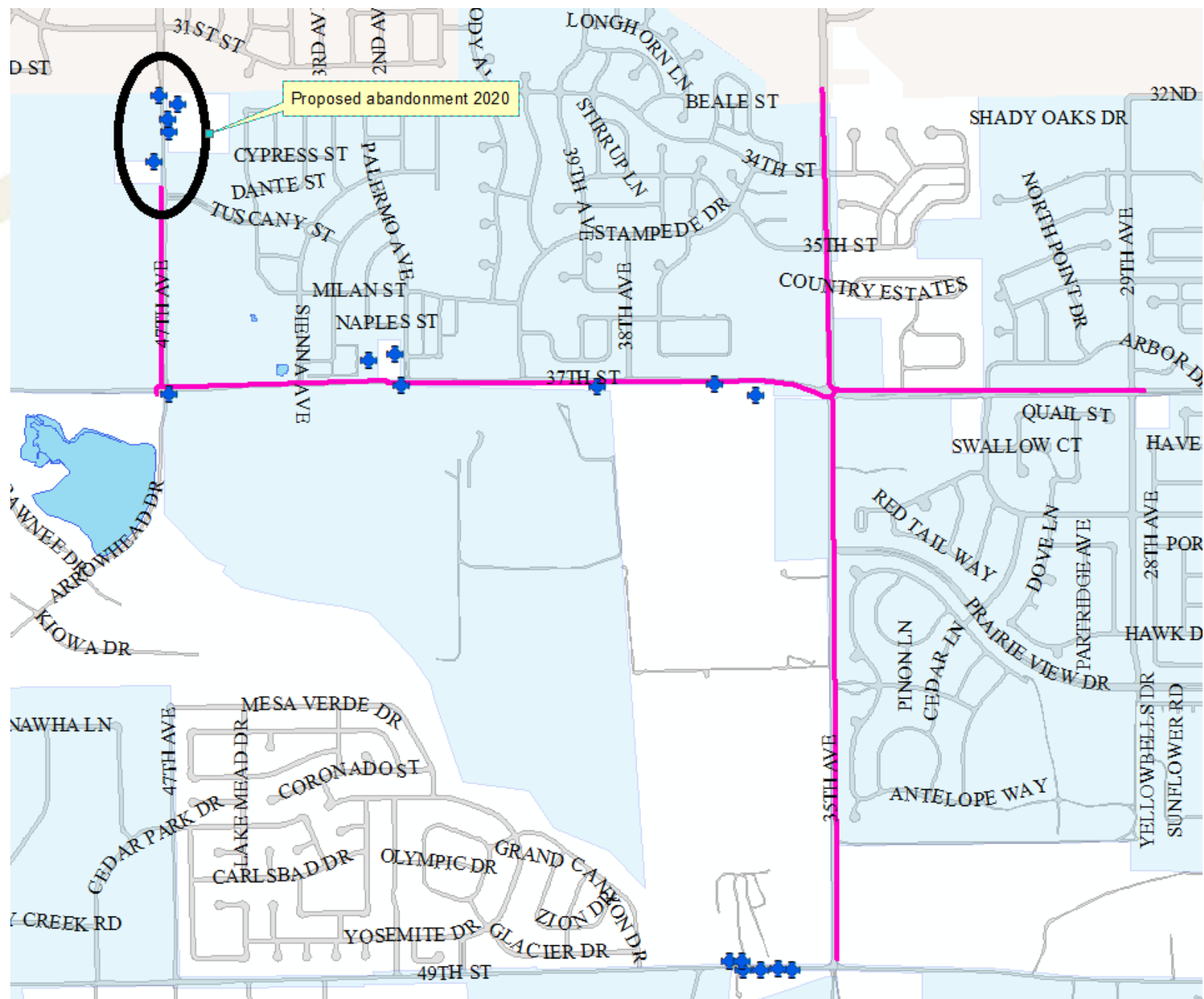
- Infrastructure to service these customers is aging
- Evans is planning to replace and widen 47th Avenue where 5 of these customers are located
- Could connect these customers to Evans system while under construction
- Good timing to transfer other 12 customers as well
- Requires a raw water dedication to Evans
 - Common practice for transfer of customers



Benefit to Greeley

- No longer providing service to customers outside of our service area
- No longer responsible for the maintenance and repair
- If we kept the 47th Avenue customers it would cost \$250,000
 - 20,000' of 8 inch waterline
 - \$2,400,000 minimum
 - Liability of maintaining and repairing infrastructure under a major roadway





Proposal

- These 17 customers require a raw water dedication of 9.07 acre-feet
 - Not single-family residential customers so 3 acre-feet/acre doesn't apply
 - Used 5-year average consumption
- Evans requested 19 units of CBT (\$1.6 million value @ \$60,000/unit, \$85,700/AF)
- Greeley negotiated
 - 0.5 shares of GLIC (\$82,500 @ \$165,000/share)
 - 8 units of CBT (\$685,700 @ \$60,000/unit, \$85,700/AF)
 - \$768,100 value

	CBT	GLIC	Total Value
Evans	19 units	0	\$1,600,000
Greeley	8 units	0.5 share	\$768,100
Difference			\$831,900



Recommendation

- Transfer these 17 customers to Evans in exchange for a raw water dedication of 0.5 shares of GLIC and 8 units of CBT
- Prepare agreement for approval at the August/September Board meeting
 - Pending Evans acceptance of proposal



Questions



WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 12

TITLE: LEGAL REPORT

RECOMMENDATION:

ADDITIONAL INFORMATION:

I. Statements of Opposition: Based on review of the June, 2020 Water Court Resume, staff and water counsel recommend that the Board file a statement of opposition in the following case:

- a. Case Number: **20CW3093** Application of Raindance Metro District No. 1 for change in location of conditional storage rights, change of 24 shares of B.H. Eaton Ditch and quantification of lawn irrigation return flows. We recommend that Greeley file a statement of opposition to ensure that these claims do not cause injury to Greeley's water rights.

Proposed Motion Language: "I move that the Board authorize the filing of a statement of opposition in Case No. 20CW3093 and for staff and legal counsel to seek resolution of issues raised by this cases consistent with Water and Sewer Board Resolution No. 3-15."

II. Diligence Update

- a. **Case No. 19CW3164** – Linn Grove Diligence Application. The only statement of opposition was filed by Cache la Poudre Water Users Ass'n. They stipulated in July. The referee entered his ruling on the decree on Aug. 5. Parties have until Aug. 26 to protest the ruling. Assuming no protest, the judge will enter the final decree after that date.

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 13

TITLE: EXECUTIVE SESSION

RECOMMENDATION:

ADDITIONAL INFORMATION:

- Matters Related to the Lower Latham Bypass Agreement.

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 14

TITLE: LOWER LATHAM BYPASS AGREEMENT

RECOMMENDATION: APPROVE AGREEMENT

ADDITIONAL INFORMATION: The Lower Latham ditch is a senior ditch on the South Platte between the confluence with the Big Thompson and Poudre Rivers. An agreement to utilize the bypass structure is essential to release water from the Greeley-Loveland Irrigation system to meet return flow obligations downstream of the South Platte and Poudre river confluence. Staff will present the terms of the agreement and recommend approval.

BYPASS LICENSE AGREEMENT

This License Agreement is entered into this _____ day of _____, 2020 by and between City of Greeley ("Licensee"), and the Lower Latham Ditch Company ("Latham").

RECITALS

WHEREAS, Latham owns bypass structures located in Section 31, Township 5 North, Range 65 West, 6th P.M., which control, measure and return water diverted from the South Platte River through the Lower Latham Ditch facilities back to the South Platte River. Said structures will hereinafter be referred to as the "Bypass Structures"; and

WHEREAS, Licensee desires to utilize the Bypass Structures, and Latham is willing to grant a license for the use of the Bypass Structures subject to the terms of the License Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. Grant of License. Latham hereby grants to Licensee a one (1) year license, beginning April 1, 2020, for the use of Latham's existing capacity in the Bypass Structures, subject to the terms and conditions of this License Agreement. The Licensee shall be entitled to utilize a maximum of **5 cfs** of Latham's existing Bypass Structures ("Flow Allocation") to run the volume of **300 acre-feet** ("Volume Allocation") through the Bypass Structures during the term of this License Agreement, subject to the terms and conditions of this License Agreement. Latham agrees within six (6) months from the termination of the one (1) year License Agreement to negotiate renewal of this License Agreement with Licensee.
2. Application and Structure Use Fees. In consideration for the License granted herein, Licensee shall pay to Latham an initial payment of **\$5,400**. This fee consists of an Application and Administration Fee of **\$500** and a Structure Use fee of **\$4,900**. The Structure Use Fee is calculated by adding the Flow Allocation Fee (\$500.00 per cfs) with the Volume Allocation Fee (\$8.00 per acre foot). Accordingly, Licensee shall be entitled to use the Flow Allocation to run up to **300 acre-feet** during the initial year in accordance with the terms of this License Agreement. Until such fees are paid Licensee shall have no right to utilize Licensee's Allocation or Volume Allocation or otherwise use the Structure. If Licensee determines that it needs to run more than its Flow Allocation or Volume Allocation through the Bypass Structures during the term of this License, then Latham agrees to negotiate in good faith with Licensee to allow it a reasonable increase in said allocation, if capacity is available in the Bypass Structures.
3. Payment. The Application Fee and the Structure Use Fee set forth in paragraph 2 is due and payable by Licensee to Latham upon the execution of this Agreement. Licensee shall not exceed the Flow Allocation at any time. If Licensee exceeds the Volume Allocation, Licensee shall pay Latham a "penalty" fee of twice the Volume Allocation Fee stated in

paragraph 2 for each acre-foot (or portion thereof) that Licensee has exceeded its Volume Allocation. Licensee shall pay such fee within thirty (30) days of determining that it has exceeded its Volume Allocation or upon receipt of notice from Latham of the same. Should any Party not pay its bill within thirty (30) days of receipt, Licensee's ability to use the Structure shall be suspended until said bill has been paid and if the bill remains unpaid after sixty (60) days, Latham may, at its election, terminate this License Agreement.

4. Limitation on Use of Licensee's Allocation. This License provides only a right for Licensee to use a portion of Latham's capacity in the Bypass Structures. Licensee understands and agrees that if, for any reason, Latham has insufficient capacity in the Bypass Structures Licensee's Allocation may be reduced or curtailed. Licensee's Allocation may also be reduced on a pro rata basis if Latham's capacity is insufficient to accommodate all Licensees who have a License Agreement with Latham.
5. Maintenance. Latham shall be responsible for the operation, maintenance, repair, replacement or reconstruction of the Bypass Structures.
6. No Conveyance of Real Property. This License Agreement does not convey any interest in the Structure or related Latham owned lands. The Licensee agrees that it shall never claim fee ownership in the Structure or related Latham owned property or an easement or right of way through, over, or on such lands because of or due to the construction, existence, maintenance, repair or use of the Bypass Structures, or this License Agreement, through or by adverse possession, prescription, consent or otherwise. This License Agreement is subject to all restrictions, reservations, rights-of-way, easements, documents or agreements existing or of record in the Clerk and Recorder's office in Weld County, Colorado. Grantors make no representations or warranties (including, without limitation, warranties of title) in or by this License Agreement.
7. Indemnification. Licensee shall expressly indemnify Latham against any claim, suit or damages of any kind arising from the use of the Structure.
8. Assignment. This License Agreement may not be assigned by Licensee.

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City of Greeley

By: _____

Name: Sean Chambers

As: Director of Water and Sewer

Lower Latham Ditch Company

By: _____

Name: James Park

As: President

Lower Latham Bypass Agreement

Presented by Jennifer Petrzelka
Water Resources Operations Manager

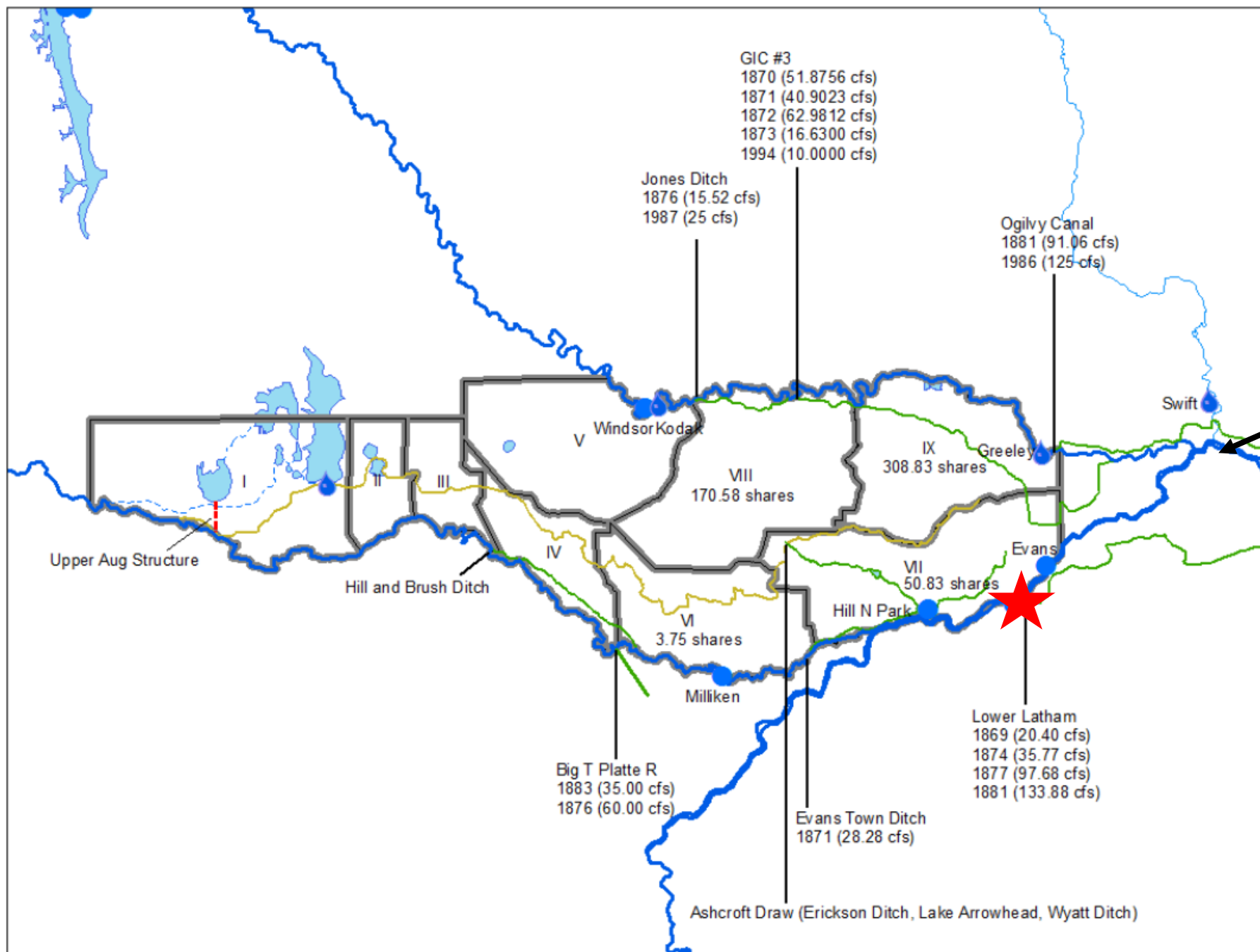
August 19, 2020



Background

- Lower Latham is a senior ditch on the South Platte between the confluence with the Big Thompson and Poudre Rivers
- Can call for water August through September
 - Currently calling and is expected to call for at least 30 days this year
- When calling, Greeley cannot release water from the GLIC system to meet return flow obligations (RFO's) on the South Platte below the confluence with the Poudre
- Bypass agreement is required to receive credit for GLIC releases





Background



Terms

- One year license to use the bypass structure (August 2020 through August 2021)
- 5 cfs capacity, total of 300 acre-feet
- Upfront payment of \$5,400
 - \$500 per cfs
 - \$8 per acre-foot
 - No refunds
- License provides right to use structure if there is excess capacity
- No conveyance of real property



Recommendation

- This bypass agreement is essential to meet the obligations set for in our GLIC decrees
- Staff recommends approving the agreement



Questions



WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 15

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

- Windy Gap Allotment Contract Update

WATER & SEWER BOARD AGENDA AUGUST 19, 2020

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 16

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: