

WATER & SEWER BOARD AGENDA

Wednesday, March 20, 2019
2:00 p.m.

GREELEY CITY CENTER
1001 11TH Avenue
Greeley, CO 80631

1. Roll Call: _____ Chairman Harold Evans _____ Vice Chairman Mick Todd
 _____ Mr. Bob Ruyle _____ Mr. Fred Otis
 _____ Mr. Joe Murphy _____ Mr. Tony Miller
 _____ Mr. Manuel Sisneros _____ Mayor John Gates
 _____ Mr. Roy Otto _____ Mrs. Renee Wheeler
2. Approval of Minutes
3. Approval of and/or Additions to Agenda

Consent Agenda

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

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

4. Action: GIC, Greeley, CCWCD Recharge Agreement Renewal
5. Action: Approve Knutson Farm Lease Renewal
6. Action: Approve Glover (F Street) Farm Lease Renewal
7. Action: Approve Lebsack Farm Lease
8. Action: Approve Eheart Water Lease
9. Action: Approve Dyecrest Water Lease
10. Action: Approve Peppler Water Lease

End of Consent Agenda

11. Pulled Consent Agenda Items



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

12. Action: Approve Sheep Draw Water Lease
13. Action: Approve Renewal of Glover Grazing Lease
14. Report: Instream Flow Augmentation Plan Update (Legislative Effort)
15. Action: Adopt Resolution In Support of Water Smart Grant Application
16. Report: CCWCD Presentation by Randy Ray, Central
17. Report: NISP Project Update
18. Executive Session
19. Action: Approve Acquisition of Greeley Irrigation Company Shares from Peckham
20. Action: Approve Acquisition of New Cache & Windsor Reservoir Shares from Western Equipment
21. Legal Report
22. Director's Report
23. Such Other Business That May Be Brought Before the Board and Added to This Agenda by Motion of the Board



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

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

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

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Joe Murphy, Tony Miller, Manny Sisneros, Mayor Gates, Roy Otto, Interim Finance Manager Renee Wheeler

Water and Sewer Department staff:

Water and Sewer Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Business Manager Erik Dial, Interim Water Operations Manager/Chief Engineer Adam Prior, Water Resources Operations Manager Jennifer Petrzela, WPCF Project Manager Tom Dingeman, Engineer Justin Scholz, Office Manager Shannon Metcalf and Senior Administrative Assistant Ettie Arnold

Legal Counsel:

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

Guests: Citizen Jack Snyder, Corollo representatives Jeff Berlin and John Rehring

2. Approval of Minutes

Mr. Murphy made a motion, seconded by Mr. Miller, to approve the January 16, 2019 Water and Sewer Board meeting minutes. The motion carried 6-0.

3. Approval of and/or Additions to Agenda

There were no changes made to the agenda.

Consent Agenda

No items for Consent Agenda.

4. Report: 2018 Financial Report

Mr. Dial presented the year-end summary for water and sewer expenditures and revenues. Overall water and sewer revenue both exceeded their budgets for the year. Among the three inside city customer classes for water, Inside Commercial and Industrial both exceeded their revenue budgets, while Inside Residential was just short of its budget target. Miscellaneous revenues from water sales through fire hydrants, augmentation water sales and water rentals were well above their revenue targets. Sewer revenue was strong for both the residential and commercial customers' classes. Water Plant Investment Fee revenue totaled \$6,027,277 through the end of 2018. This represents 143% of the anticipated budget of \$4,211,507. Sewer Plant Investment Fee revenue totaled \$3,095,450 through the end of 2018. This represents 102% of the anticipated budget of \$3,044,609. Operating expenditures for both water and sewer were within their budgets at year-end.

5. Report: 4th Quarter CIP Update

Mr. Prior presented the 4th Quarter 2018 CIP report. He reported on the status of distribution, transmission, man-hole rehab and water treatment plant projects. Active projects include the WPCF Blower Repairs, Bellvue Needs Assessment, Bellvue Road & Bridge Replacement and North Greeley Sewer, Phase IIA.

6. Report: Greeley Water Book Update

Mr. Chambers introduced and reminded the board that the board commissioned a comprehensive history of Greeley water in 2015. Two of three phases have been completed to date, but the initial budget for the project has been expended. Staff and the board are working with the authors to refine the vision of what the end product is intended to be. Chairman Evans added insight to the development and progress of the research needed and the draft chapters which are through 1940's. Staff has begun evaluating publication options, including the possibility of self-publishing a smaller version of history that would coordinate with 150 year anniversary of Union Colony in 2020.

7. Report: WPCF Master Plan Update

Mr. Prior introduced P.E. John Rehring and Jeff Berlin who presented an update regarding WPCF treatment capacity, regulations and asset performance. The Master Plan Update would focus on operational reliability, infrastructure robustness, facility preparedness, and adaptability for the future. Topics discussed included, load rate and growth, population projections, and infrastructure condition assessments.

8. Approve Holcim Augmentation Lease

Water Resources staff recommends approval of the enclosed augmentation lease with Holcim (US), Inc. The lease is for an initial term of 10 years, and will automatically renew for two additional 5-year terms unless terminated. Holcim anticipates the augmentation depletions to be 5 acre-feet per year, but the lease is for a maximum of 10 acre-feet in case Holcim incurs additional replacement obligations in its substitute water supply plan and/or augmentation plan. Releases will be made out of Milton-Seaman Reservoir.

Vice Chairman Todd made motion, seconded by Mr. Miller, to approve the augmentation lease with Holcim (US), Inc. The motion carried 5-1 with Chairman Evans, Vice Chairman Todd, Mr. Otis, Mr. Miller and Mr. Sisneros voting in favor of and Mr. Murphy voting against the motion.

9. Executive Session

At 3:48 p.m. Chairman Evans made a motion to move into Executive Session to address the following matters:

1. Purchase, acquisition, lease, transfer, or sale of property under C.R.S. §24-6-402(4)(a) and Greeley Municipal Code 2.04.020(1).
2. Conferences with an attorney for the purposes of receiving legal advice on specific legal questions under C.R.S. §24-6-402(4)(b) and Greeley Municipal Code 2.04.020(2).
3. Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators, as authorized by C.R.S. §24-6-402(4)(e) and Greeley Municipal Code 2.04.020(5).

Chairman Evans identified the following topics for discussion:

1. Matters Related to Brown Acquisition
2. Matters Related to Windy Gap FIRMING Project

Vice Chairman Todd made motion, Mr. Miller seconded the motion^(DB1). The motion carried 6-0.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Joe Murphy, Tony Miller, Manual Sisneros, Mayor John Gates, City Manager Roy Otto, Interim Finance Manager Renee Wheeler, Director of Water and Sewer Sean Chambers, Deputy Director Water Resources Adam Jokerst, Interim Operations Manager Adam Prior, Business Manager Erik Dial, Water Resources Manager Jennifer Petrzalka, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Environmental and Water Resources Attorney Aaron Goldman, Water and Sewer Board Counsel Carolyn Burr, Office Manager Shannon Metcalf and Senior Administrative Assistant Ettie Arnold

Portions of this executive session were unrecorded because the discussion constituted attorney-client privileged communication.

Mayor Gates left the meeting at 4:04 pm.

Roy Otto left the meeting at 4:57.

The Executive Session ended at 4:57 p.m. and the regular meeting resumed.

10. Action: Approve Farm Lease

Water Resources staff recommends approval of the enclosed farm and irrigation water lease agreement with Ivan Ogan and Sons, Inc. for the lease of a 152-acre farm that the City is under contract to acquire from Dann R. Brown, et al. The lease is for an initial term of 10 years, with a mutual option to renew for an additional term of 5 years, and includes the 2 shares of Water Supply and Storage Company historically irrigated with the property, as well as the lateral rights necessary to deliver the WSSC water to the farm.

Chairman Evans noted that the Board likely did not need to consider approval of the lease enclosed for Item 10. Mr. Chambers confirmed that Board consideration of this item was no longer necessary. The Board did not consider Item 10.

11. Legal Report

Carolyn Burr presented a summary of six cases that legal counsel and staff recommended to the board that statements of opposition be filed in order to ensure that the applications do not injure Greeley's water rights:

- a. **18CW3215 — City of Loveland:** Application for Conditional Storage Right on Big Thompson River. Amount claimed is 1600 a.f., with refill and a fill rate of 40 cfs.
- b. **18CW3240 — Raindance Metro Dist. No. 1:** Application for Conditional Rights of Exchange on the Cache la Poudre. This application involves the Water Valley development near Windsor. There are 9 exchange points along a reach from the headgate of the B.H. Eaton ditch up to the Windsor WWTP. The exchange rate varies from 4 cfs to 25 cfs.
- c. **18CW3216 — Joint Application by Northern and CWCB:** Application for Approval of Proposed Protected Mitigation Releases on the Cache la Poudre River. This application follows passage of SB 18-170 — Northern's legislation to allow for the dedication and protection of reservoir mitigation releases for instream flow purposes. Flow rates are from 18-25 cfs affecting up to 14,350 a.f. of releases.
- d. **18CW3228 — Front Range Oil & Gas:** Application for change in point of diversion of the Wyatt Ditch. The original point of diversion and proposed alternate point of diversion are located between the South Platte and Big Thompson confluence and the Lower Latham point of diversion, which involves Greeley's exchange reach on the South Platte and Big Thompson.
- e. **18CW3237 — Dixie Water, LLC:** Application for conditional surface and storage rights and conditional appropriative right of exchange on the South Platte River. The applicant is seeking a 6.7 cfs surface right, 2500 a.f. of storage and a 3.34 cfs exchange of up to 500 a.f. per year. The exchange reach overlaps with Greeley's South Platte/Big Thompson exchange.

Motion was made by Mick Todd and seconded by Mr. Murphy to authorize the filing of statements of opposition in these cases. A sixth case was then discussed, Case No. 18CW3235 – Crockroft Dairy Farm, LLLP, in which applicant seeks absolute and conditional storage rights on the South Platte and Poudre.

Mick Todd moved to amend the original motion and Mr. Murphy seconded to authorize the filing of a statement of opposition in Case No. 18CW3215, 18CW3240, 18CW3216, 18CW3228 and 18CW3237, 18CW3235 and for staff and legal counsel to seek resolution of issues raised by those cases consistent with Water and Sewer Board Resolution No. 3-15. The motion carried 6-0.

Carolyn Burr then gave the following update in Case No. 17CW3020 – Greeley/Leprino Application: Greeley has stipulated with New Cache la Poudre Irrigating Company, Ogilvy Irrigating and Land Company and Cache la Poudre Water Users Association. The remaining parties are Bijou and Central.

Erik Dial left the meeting at 5:05 p.m.

12. Director's Report

Mr. Chambers gave a report on the following items:

- Council Petition - Non-Potable Memo
- Board/Council Tour – Friday, August 23rd
- Meet with Windsor (Council to tour Bellvue)
- Colorado Water Congress Sponsorship was a Success!
- Greeley Water Rental Round Up
- Thank You Letter SAE Sponsorship

Jennifer Petrzeka left the meeting at 5:17.

Mick Todd left the meeting at 5:25.

Jerrae Swanson left the meeting at 5:26.

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

Chairman Evans adjourned the meeting at 5:28 p.m.

Harold Evans, Chairman

Shannon Metcalf, Office Manager



BEGIN CONSENT AGENDA

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X

NO ENCLOSURE

ITEM NUMBER: 4

TITLE: ACTION: APPROVE GIC, GREELEY, CCWCD
RECHARGE AGREEMENT RENEWAL

RECOMMENDATION: APPROVE RECHARGE AGREEMENT
RENEWAL

ADDITIONAL INFORMATION:

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

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

RECHARGE AGREEMENT

THIS AGREEMENT, made and entered into this 15th day of January, 2019, by and between the Greeley Irrigation Company, hereinafter referred to as "GIC," the City of Greeley, acting by and through its Water and Sewer Board, hereinafter referred to as "Greeley" and the Central Colorado Water Conservancy District (CCWCD), the Ground Water Management Subdistrict of the Central Colorado Water Conservancy District (GMS) and the Well Augmentation Subdistrict of the Central Colorado Water Conservancy District (WAS), hereinafter referred to collectively as "Central:"

WITNESSETH:

WHEREAS, GIC is a mutual ditch company and Greeley is a municipal corporation which own the Greeley No. 3 Ditch, hereinafter referred to as the "Ditch" in proportion to their respective ownership interests; and

WHEREAS, GIC owns a 5/8 interest in the Ditch and Greeley owns a 3/8 interest in the Ditch; and

WHEREAS, CCWCD, GMS and WAS are each quasi-municipal corporations and political subdivisions of the state of Colorado organized and existing as water conservancy districts pursuant to C.R.S. § 37-45-101 et seq. and are authorized and empowered thereby to furnish water to lands within their boundaries; and

WHEREAS, Central owns and operates a recharge project referred to as the Greeley No. 3 Ditch Recharge Project (hereinafter, the "Project") decreed in Water Division 1, Case No. 05CW331 utilizing water rights owned by Central; and

WHEREAS, Operation of the Project may involve Central's use of the Ditch, subject to the terms and conditions of this Agreement, to deliver water to recharge facilities proximate to the Ditch, or to use the Ditch itself as a recharge facility; and

WHEREAS, the Parties entered into a certain Recharge Agreement dated October 10, 2011 for use of the Ditch by Central which expired on June 30, 2016; and

WHEREAS, GIC, Greeley and Central desire to renew the Recharge Agreement to allow the use of the Ditch for Project purposes;

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants of the parties hereto, IT IS AGREED AS FOLLOWS:

General Provisions

1. The above Recitals are a part of this Agreement and are incorporated herein by reference.

2. GIC and Greeley agree that Central may use the “available ditch capacity”, as defined herein, at times when GIC and Greeley determine that there is sufficient safe carrying capacity to permit the diversion of water owned or leased by Central for the purpose of allowing the same to be recharged in the ditch, or delivered to recharge sites proximate to the ditch (off-ditch recharge sites) for recharge and augmentation purposes. Central shall have the right to use one hundred (100) percent of “Available Ditch Capacity” for such purposes under this Agreement subject to the terms and conditions of this Agreement. Available Ditch Capacity is defined as the maximum flow rate in c.f.s., if any, that may safely be carried in the ditch in excess of the amount diverted under GIC’s and Greeley’s rights which include their respective decreed priorities, other water lawfully carried in the ditch, and “free river” water diverted and used by GIC shareholders and/or Greeley. GIC and Greeley shall have the right to reject the diversion of any water into the ditch that is not of sufficient quality. During times Central is not using the Available ditch Capacity granted herein, it may be used by others in the discretion of GIC and Greeley.
3. GIC and Greeley agree that Central may, as necessary for operation of the Project, install measuring devices, recorders, turn-outs, or diversion structures, in the Ditch, at locations mutually approved by Central, Greeley, and GIC, which are acceptable to the Division Engineer, at Central’s sole cost and expense. The installation of such devices shall be made only after GIC and Greeley approve the plans and specifications for the construction of any devices which affect the banks of the Ditch. Any construction shall be commenced and completed so as not to interfere with the diversion of water through the ditch during the irrigation season, the carriage of stormwater in the Ditch, or maintenance and construction activities on the ditch by Greeley and GIC. Central shall ensure that it has obtained any necessary governmental or other approvals and permits prior to commencing such installation or construction work.
4. Central shall be responsible for maintaining all accounting associated with use of the Ditch under this Agreement. GIC shall be responsible for the day-to-day operation of the measuring devices and structures with input from Central at the times when water has been diverted into the Ditch for recharge or delivery to the Cache La Poudre River. GIC shall use its best efforts to ensure that no person or party is diverting Central’s recharge water out of the Ditch; except that this provision shall not be construed to restrict a GIC shareholder or Greeley from diverting water in the Ditch under rights owned or controlled by GIC or Greeley. GIC and Greeley shall be entitled to receive duplicate copies of any records which Central keeps in connection with a measuring device involving operation of the Project.
5. At times when the Ditch is not being used pursuant to this Agreement, GIC and/or Greeley may use any devices and structures installed by Central for their own purposes without fee or charge but shall operate and maintain the same.
6. Central shall not be entitled to any record made or kept by GIC or Greeley during the periods of time when water is not being recharged in the Ditch or being carried in the ditch for delivery to off-ditch recharge sites.

7. The operation of the Ditch shall remain under the sole control and authority of GIC and Greeley. GIC agrees to use reasonable efforts to maximize diversions for recharge subject to the terms and conditions of this Agreement; however, GIC, in its subjective discretion, will not be required to run water under this Agreement during times when running water would interfere with GIC's or Greeley's ability to operate, maintain and repair the Ditch, during times when running water would threaten the structural integrity of the Ditch, or during times when running water would exceed the Available Ditch Capacity of the Ditch.
8. The diversion of water by GIC under this Agreement shall be at the request of Central. If there are certain times when certain amounts of recharge water will not assist Central, or for any reason, Central shall provide GIC with at least 24 hours advance notice not to divert water for recharge during those times or in those amounts. Upon such advance notice by Central, Central shall not be required to make payment during those times for any amounts subsequently diverted by GIC for recharge purposes.
9. Central shall have access as necessary along the right-of-way of the Ditch for purposes of ingress and egress to accomplish the terms of this Agreement, provided, however, Central has no authority to perform any work or labor upon the Ditch or to contract therefore except as may be specifically agreed to in advance by GIC and Greeley, nor may Central interfere with GIC's or Greeley's maintenance activities in the Ditch.
10. Central's rights granted herein are subordinate to the primary right of GIC and Greeley to use the Ditch for the diversion of the water rights now decreed to the Ditch or use for other water lawfully carried in the Ditch, and to any future rights GIC and Greeley may acquire.

Recharge Provisions

11. Whenever GIC is delivering water to its shareholders, no in-ditch recharge credit shall be claimed by Central. During such times, this provision does not preclude, and the Parties specifically contemplate, diversion of Central's waters for delivery to an off-ditch site for recharge purposes to the extent there is Available Ditch Capacity under this Agreement.
12. Any number of off-ditch recharge sites may be used under this Agreement, subject to the approval of GIC and Greeley. The location, design and construction of any new headgates on the Ditch to deliver water to off-ditch recharge sites shall be approved by the GIC and Greeley. Any device or structure installed in the Ditch by Central for any purpose necessary to carry out this Agreement shall remain the property of Central and Central shall be entitled to remove the same upon termination of this Agreement except for any structure which is built into the banks or walls of the Ditch. Central shall be responsible for the maintenance and repair of any device or structure installed by Central. Any construction shall be commenced and completed so as not to interfere with the diversion of water through the Ditch during the irrigation season, the carriage of stormwater in the Ditch, or maintenance and construction activities on the Ditch by

Greeley and GIC. Central shall ensure that it has obtained any necessary governmental or other approvals and permits prior to commencing such construction work.

13. Diversions of water under this Agreement shall be measured in acre feet. Central shall pay to GIC and Greeley the sum of \$8 for each acre-foot of water diverted into the ditch and delivered under this Agreement calculated as follows. When only Central's waters are being diverted into the Ditch, the amount in acre feet for which payment shall be due shall be the difference between measurement of water at the headgate of the Ditch on the Cache la Poudre River and measurement of water at the tail end of the Ditch of water that is returned to the Cache la Poudre River. Subtraction of water measured at the tail shall include subtraction of any water that is diverted from the ditch through an augmentation structure, storm water release structure or other structure in which water is diverted from the Ditch for return to the River. If Central is diverting water under this Agreement for delivery to an off ditch-site at times when irrigation water is being run in the Ditch, then the amount in acre feet for which payment is due shall be based on measurement at the point Central's waters are delivered out of the Ditch. In addition to the running fee described above, Central shall pay an annual fee of \$5,000 for the right to use the ditch pursuant to the terms and conditions of this Agreement. All sums paid by Central under this Agreement shall be split between GIC and Greeley, with 5/8 of this sum paid to GIC and 3/8 to Greeley. The payment shall be made in accordance with paragraph 16, below.
14. Central shall be entitled to receive one hundred percent of the in-ditch recharge credits resulting from diversions into the Ditch of water owned or leased by Central under this Agreement. Central shall be entitled to claim and receive one hundred percent of all recharge credits for water which seeps out of the ditch between the headgate at the Cache La Poudre River and the point of delivery to an off-ditch recharge site. The credits produced from delivery to any off-ditch site shall be allocated to Central according to the terms of a separate agreement between Central and the site owner.
15. The water diverted pursuant to this Recharge Agreement is not subject to and shall not be governed by the provisions of the Agreement between Central, Greeley and GIC dated March 30, 2010 (hereinafter "Bypass Agreement") and the parties agree that water diverted under the Bypass Agreement shall have priority over any diversions at the Canal No. 3 headgate made pursuant to this Recharge Agreement.

Miscellaneous Provisions

16. All amounts due to GIC and Greeley under this Agreement, including the annual fee, shall be payable annually on December 1 of each year based on Central's use of the Ditch between November 1 of the previous year until October 31 of the subject year as calculated according to paragraph 13 above.
17. Central does hereby indemnify and agrees to hold GIC and Greeley harmless of and from any claims or cause of action from third parties against GIC and Greeley arising out of the use and operation of the ditch for Central's recharge purposes; however, nothing

herein shall be construed as a waiver of Central's immunity under the Governmental Immunity Act.

18. No act by Central or GIC or Greeley under this Agreement shall be considered, or claimed by either party, to be prescriptive or adverse use of the Ditch, water rights, or other property utilized under this Agreement.
19. This document represents the complete agreement of the parties hereto and no oral modification shall be recognized. Any amendments or additions shall be made in writing signed by the parties.
20. The term of this Agreement shall be for one year beginning on the date first set forth above and ending on October 31, 2020. This Agreement shall automatically renew for an additional one year term beginning on November 1 of each year unless Central, Greeley or GIC provides prior notice on or before September 1 of each year that it wishes to terminate this Agreement. Any party, on or before September 1, may request to renegotiate the Agreement and shall include with its request a list of the specific terms and conditions the noticing party desires to re-negotiate. If the parties fail to come to an agreement on the proposed re-negotiated terms, then this Agreement shall terminate at the end of its then current term.
21. This Agreement is binding upon the parties, their successors and assigns.
22. Any assignment of this Agreement by Central shall be subject to approval by GIC and Greeley in their sole discretion, respectively.
23. Nothing herein shall prevent GIC or Greeley from lining or otherwise maintaining the ditch to the extent it deems necessary to maintain or improve the structural integrity of the Ditch, or for any other reason, even if such lining or maintenance should cause a reduction in seepage from the Ditch.

IN WITNESS WHEREOF, GIC has, by the authority of its Board of Directors, caused this agreement to be executed by its President and attested by its Secretary, and Greeley has caused this agreement to be executed by its Water and Sewer Board Chair and attested to by the Board Secretary, and GMS, WAS and CCWCD have, by the authority of its Board of Directors, each caused this agreement to be executed by its President and attested by its Secretary.

DATED the date and year first written above.

CENTRAL COLORADO WATER
CONSERVANCY DISTRICT

By 
Randall Knutson, President

ATTEST:

(Seal)

Randy Ray, Secretary



GROUND WATER MANAGEMENT
SUBDISTRICT OF THE CENTRAL
COLORADO WATER CONSERVANCY
DISTRICT

By

Randall Knutson, President

Randall C Knutson

(Seal)

Randy Ray, Secretary



Randy Ray

WELL AUGMENTATION SUBDISTRICT OF
THE CENTRAL COLORADO WATER
CONSERVANCY DISTRICT

By

Randall Knutson, President

Randall C Knutson



(Seal)

Randy Ray, Secretary

Randy Ray

GREELEY IRRIGATION COMPANY

By Roger Schmitt
President

ATTEST:

(Seal)

Secretary

CITY OF GREELEY

By _____

ATTEST:

(Seal)

Secretary



WATER AND SEWER BOARD MEETING: CENTRAL RECHARGE AGREEMENT WITH COG AND GIC

WEDNESDAY, MARCH 20, 2018

BACKGROUND

1) Purpose: allows Central operation of recharge project referred to as the Greeley No. 3 Ditch Recharge Project decreed in Div. 1 WC Case No.

05CW331

2) Parties to the Agreement: Greeley Irrigation Co. (GIC), City of Greeley, Central Colorado Water Conservancy District (CCWCD), the Ground Water Management Subdistrict (GMS) and the Well Augmentation Subdistrict (WAS) (collectively known as Central)

3) This is a renewal of the prior Recharge Agreement dated 10/10/2011 (expired 6/30/2018). Term of current (proposed) agreement expires 10/31/2020 with an automatic annual renewal thereafter unless any party decides to renegotiate or cancel

TERMS & CONDITIONS

- Allows Central use of excess available capacity above GIC's and City of Greeley's native rights for delivery to Central's recharge sites
- Revenues: \$5,000 / year for right of use, then \$8/AF running charge for all Central water diverted for recharge under the terms of this agreement
 - Payments are split between the GIC (5/8) and City of Greeley (3/8)
 - As a shareholder, ~25% of the GIC revenue benefits Greeley
- Greeley has the right to insist upon renegotiation on or before Sep. 1 2020, in which case the agreement would require renegotiation for water year 2021.

TERMS & CONDITIONS

- Central required to install measuring devices and structures, and maintain accounting
- At times when Central is not utilizing the ditch, GIC and Greeley are allowed to use structures at no fee or charge
- Central's rights are subordinate to GIC and Greeley decreed water rights
- Only obligation under this agreement is the operation and maintenance of Central's devices/structures should the City use them

The background is a blue gradient with decorative white circuit-like lines in the corners. The lines consist of straight segments and small circles, resembling a stylized electronic circuit or data network.

RECOMMEND APPROVAL OF AGREEMENT

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X

NO ENCLOSURE

ITEM NUMBER: 5

TITLE: ACTION: APPROVE KNUTSON FARM LEASE
RENEWAL

RECOMMENDATION: APPROVE KNUTSON LEASE RENEWAL AND
DELEGATE AUTHORITY TO STAFF

ADDITIONAL INFORMATION:

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

Recommended action for Consent Agenda: Water Resources staff recommends approval of the enclosed Farm Lease Agreement Renewal between the City of Greeley and Randall Knutson, and also recommends that the Board delegate authority to staff to renew this lease agreement in the future, provided that the terms of the agreement remain unchanged.



January 28, 2019

Knutson Land Management, LLC
Attn: Randall Knutson
13497 WCR 44
Platteville, Colorado 80651

**Re: *Renewal of Farm Lease Agreement for Dill Farm Property
1734 Holly Avenue, Weld County, Colorado***

Dear Mr. Knutson,

The City of Greeley and Knutson Land Management, LLC entered into that certain Farm Lease Agreement for the Dill Farm Property, a parcel of agricultural real property consisting of approximately 25.7 acres located at 1734 Holly Avenue in unincorporated Weld County, on February 12, 2018 ("the 2018 Lease"). The 2018 Lease, a copy of which is enclosed for your convenient reference, expired on December 31, 2018.

I am writing to express the Water and Sewer Department's interest in renewing the 2018 Lease, as contemplated by paragraph 2 therein, for an additional term of one year. If renewed, all terms and conditions from the 2018 Lease will remain in place for the duration of this first renewal term, which will begin on the date this renewal letter is executed and expire on December 31, 2019.

In accordance with paragraph 3(a) of the 2018 Lease Agreement, the Annual Lease Amount is to be adjusted upon renewal in accordance with the CPI for the Denver-Boulder-Greeley Region. The CPI increased by 2.9% in 2018, so the Annual Lease Amount due for 2019 will be \$20.58 per acre. The Dill Farm Property consists of a total farmable area of 25.7 acres, so the total Annual Lease Amount for 2019 will be \$528.91. Upon renewal, this amount will be due to the City by July 1, 2019.

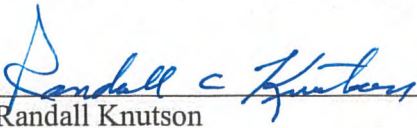
Please note that this offer of renewal is expressly contingent on authorization from the City of Greeley Water and Sewer Board on February 20, 2019. If these terms of renewal are acceptable, please sign below and return this letter to Alex Tennant, 1001 11th Ave 2nd Floor, Greeley, CO 80631 by February 15, 2019. If the Board authorizes this renewal at its February meeting, I will forward a fully executed copy of this letter for your records. Please contact me at 970-336-4039 if you have any questions.

Sincerely,

Alex Tennant

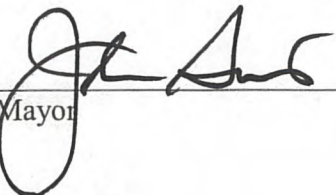
A handwritten signature in black ink that reads "Alex Tennant". The signature is written in a cursive style with a large, stylized "A" and "T".

KNUTSON LAND MANAGEMENT, LLC


Randall Knutson

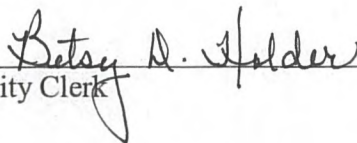
Date: 2/14/19

CITY OF GREELEY


Mayor

Date: 2/26/19

ATTEST:


City Clerk



FARM LEASE AGREEMENT

This FARM LEASE AGREEMENT ("Lease Agreement") is entered into this 12th day of February, 2018, by and between the CITY OF GREELEY, a Colorado home rule municipality, whose address is 1100 10th Street, Suite 300, Greeley, Colorado 80631 ("City") and KNUTSON LAND MANAGEMENT, LLC, a Colorado limited liability company, whose address is 13497 WCR 44, Platteville, Colorado 80651 ("Knutson").

RECITALS

WHEREAS, the City owns a parcel of agricultural real property commonly known as the Dill Farm, which consists of approximately 25.7 farmable acres located at 1734 Holly Avenue in Section 11, Township 5 North, Range 65 West of the 6th P.M. in unincorporated Weld County, and is more particularly shown on Exhibit A, attached hereto and incorporated herein ("Dill Farm Property"); and

WHEREAS, Knutson desires to lease the Dill Farm Property from the City for farming purposes, and the City desires to lease the Dill Farm Property to Knutson for such purposes on the terms and conditions of this Lease Agreement;

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

AGREEMENT

1. FARM LEASE. The City hereby leases to Knutson the Dill Farm Property for farming purposes, subject to the terms and conditions of this Lease Agreement.

2. TERM OF LEASE. The term of this Lease Agreement begins on the date of mutual execution by the City and Knutson, and expires on December 31, 2018. Thereafter, the Lease Agreement may be renewed for subsequent terms of one year each by a mutual written agreement of the parties.

3. ANNUAL LEASE AMOUNT. For the initial term that this Lease Agreement is in effect, Knutson shall pay to the City a total amount of \$514.00 for agricultural use and occupancy of the Dill Farm Property ("Annual Lease Amount"), which is equal to \$20.00 per acre for approximately 25.7 acres of farmable real property. The Annual Lease Amount shall be due and payable by July 1 of each calendar year that this Lease Agreement is in effect.

a. For each year this Lease Agreement is renewed in accordance with Paragraph 2 above, the Annual Lease Amount shall be adjusted in accordance with the increase in the Consumer Price Index ("CPI") for the Denver-Boulder-Greeley Region, using the CPI level on the date this Lease Agreement is mutually executed as the basis for comparison. Regardless of any future decrease in the CPI, the Annual Lease Amount shall never be less than \$20.00 per acre of farmable real property.

4. WATER RIGHTS. This Lease Agreement is for the agricultural use and occupancy of the Dill Farm Property only, and does not grant to Knutson any right to the use of water rights owned by the City.

5. IMPROVEMENTS. This Lease Agreement does not grant to Knutson any right to the use of structures or improvements located on the Dill Farm Property.

6. CONDITION OF THE PROPERTY. Prior to signing this Lease Agreement, Knutson has inspected or caused to be inspected the Dill Farm Property and acknowledges that the Dill Farm Property is being leased in "as-is" condition. No additional representations, statements or warranties of any kind, express or implied, have been made by or on behalf of the City as to the condition of the Dill Farm Property. Knutson shall hold harmless the City for any alleged defect in the condition of Dill Farm Property or for any alleged limitation regarding its suitability for farmland.

7. AUTHORIZED USE OF THE PROPERTY. Knutson shall occupy and use the Dill Farm Property solely for farming, and shall be responsible for proper care of the Dill Farm Property consistent with sound agricultural practices. Knutson shall apply all weed control chemicals and fertilizers, if any, in compliance with applicable federal, state, and local regulations. Knutson shall furnish, at its sole expense, all labor, machinery, fertilizer, weed spray, and other items needed for farming the Dill Farm Property.

8. LESSEE'S COVENANTS AND AGREEMENTS.

- a. Knutson shall keep the Dill Farm Property clear of weeds.
- b. Knutson shall not assign this Lease Agreement nor sublet the Dill Farm Property or any part thereof, nor assign, pledge, or mortgage Knutson's interest in this Lease Agreement or any crops produced hereunder without the prior written consent of the City, which consent shall not be unreasonably withheld.
- c. Knutson shall not construct, nor permit construction of any structure, building or other improvement, temporary or otherwise, on the Dill Farm Property without the prior written consent of the City, which consent shall be in the sole discretion of the City.
- d. Knutson shall not erect, paint, or maintain any signs on the Dill Farm Property without the prior written consent of the City, which consent shall be in the sole discretion of the City.
- e. Knutson shall not allow any noise, odors, fumes, or vibrations on the Dill Farm Property, other than those caused by normal agricultural practices, that would cause disruption of normal activities on adjacent properties.
- f. Knutson shall not use or permit to be used any insecticide, pesticide, rodenticide, herbicide, or other chemical substance on the Dill Farm Property for weed, pest, or rodent control or fertilization that is prohibited by any federal, state or local statute, ordinance, resolution, rule or other applicable regulation.
- g. Knutson shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Dill Farm Property or any crops grown thereon.
- h. Knutson agrees, covenants, and warrants to maintain the Dill Farm Property in good repair and in the condition in which it was received at the commencement of this Lease Agreement.
- i. Subject to any duly executed renewals in accordance with Paragraph 2 above, Knutson agrees to immediately vacate and surrender possession of the Dill Farm Property to the City at the expiration or termination of this Lease Agreement.

9. INDEMNIFICATION.

a. Knutson assumes all risk of loss or damage to any crops or improvements on the Dill Farm Property, whether from windstorm, fire, earthquake, snow, water run-off, soil conditions, or any other causes whatsoever.

b. Knutson releases and agrees to indemnify, defend and hold harmless the City, its agents, officers, employees, and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from Knutson's operations related to this Lease Agreement.

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

10. HAZARDOUS WASTE.

a. Knutson shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Dill Farm Property by Knutson, its agents, employees, contractors, or invitees without the prior written consent of the City (which consent the City shall not unreasonably withhold so long as Knutson demonstrates to the City's reasonable satisfaction that such Hazardous Material is necessary or useful to Knutson's use of the Dill Farm Property for agricultural purposes, and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Material).

b. If Knutson breaches the obligations stated herein, or if the presence of Hazardous Material on the Dill Farm Property caused or permitted by Knutson results in contamination of the Dill Farm Property, or if contamination of the Dill Farm Property by Hazardous Material otherwise occurs for which Knutson may be legally liable to the City for damages resulting therefrom, then Knutson shall indemnify, defend, and hold the City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the term of this Lease Agreement as a result of such contamination. This indemnification of the City by Knutson includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Dill Farm Property.

c. Without limiting the foregoing, if the presence of any Hazardous Material on the Dill Farm Property caused or permitted by Knutson results in any contamination of the Dill Farm Property, Knutson shall promptly take all actions at its sole expense as are necessary to return the Dill Farm Property to the condition existing prior to the introduction of any such Hazardous Material to the Dill Farm Property; provided that the City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Dill Farm Property.

d. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321; (v) defined as a "hazardous

waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6903; (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601; or (vii) defined as a “regulated substance” pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. § 6991.

11. RESERVATIONS. The City reserves the right under this Lease Agreement to (i) have its officers, employees, and representatives enter and inspect or protect the Dill Farm Property at any time; (ii) use any portion of the Dill Farm Property for public utilities and as ingress and egress for public use and rights of way; (iii) use, repair, install, replace, and maintain public utilities and rights-of-way on, over, or under the Dill Farm Property; and (iv) use any portion of the Dill Farm Property as a site for the application of digested biosolids. The City shall compensate Knutson for any actual damages incurred to growing crops as a direct result of the activities described in this paragraph.

12. TERMINATION FOR CAUSE.

a. Knutson agrees to observe and perform the terms and conditions of this Lease Agreement. If Knutson fails to make payment of the Annual Lease Amount, or any part thereof, or if Knutson fails to observe or perform any term or condition of this Lease Agreement, then the City, upon written notice to Knutson, may in its sole discretion terminate this Lease Agreement and re-enter and repossess the Dill Farm Property, with or without legal proceedings, using such force as may be necessary, and remove any property belonging to Knutson without prejudice to any claim for rent or for the breach of covenants hereof. Knutson agrees to indemnify and hold the City harmless from and against any costs for the removal and storage of Knutson’s property incurred by the City under the provisions of this paragraph.

b. If the City determines that Knutson has created a public safety hazard, the City may immediately take action to secure the safe operation of the Dill Farm Property, including without limitation, terminating this Lease Agreement and/or removing Knutson and any of Knutson's equipment or crops from the Dill Farm Property.

c. If the City enters into a contract to sell the Dill Farm Property, the City may terminate this Agreement upon 30 days written notice to Knutson. If such notice is received after September 1st, the City shall reimburse Knutson for actual damages to growing crops, not to exceed the amount Knutson would have received under any valid written contract Knutson has to sell the crops in existence at the time of the demand, less any savings, such as seed, herbicide, fertilizer, pumping costs, etc. that are not incurred to produce the crops. In the absence of a valid written contract to sell the crops, reimbursement for growing crops shall be based on historical production yield data and currently applicable Farm Service Agency prices for Larimer and Weld counties, less any savings as described above.

13. INSURANCE REQUIREMENTS.

a. Knutson shall purchase and maintain for the full period of this Lease Agreement, including any additional extension periods, at Knutson’s sole expense, insurance policies providing coverage as follows:

i. Farm liability insurance, including coverage for bodily injury, property damage, contractual liability, and broad-form property damage and owner/contractor’s protective coverage, with a minimum coverage of not less than \$1,000,000.00 or as approved by the City of Greeley Risk Manager.

ii. Workers' compensation and employers' liability insurance, if applicable, which shall cover the obligations of Knutson in accordance with the provisions of the Workers' Compensation Act of Colorado, as existing now or hereafter amended.

b. Before commencement of the lease term, Knutson must present all applicable insurance policies, certificates of insurance, and endorsements, along with a signed copy of this Lease Agreement, to the City of Greeley Risk Manager, and receive the Risk Manager's written approval as to the adequacy of such insurance coverage.

c. The insurance policies shall contain an endorsement naming the City of Greeley, Colorado, a municipal corporation, and its council members, officers, agents, employees, and volunteers as additional insured parties with respect to all activities Knutson may perform under this Lease Agreement. Moreover, such endorsement shall include a notice provision requiring 30 days written notice to the City before any cancellation.

d. Knutson shall only retain insurance companies with authority to issue policies in the State of Colorado to provide the requisite insurance coverage under this Lease Agreement.

e. For the term of this Lease Agreement, Knutson shall not cancel, materially change, or fail to renew the insurance coverage, and Knutson shall notify the City of Greeley's Risk Manager of any material reduction or exhaustion of aggregate policy limits. If Knutson fails to purchase or maintain the insurance coverage stated in this Lease Agreement, the City shall have the right to procure such insurance coverage at Knutson's expense.

f. Nothing in this Paragraph 13 shall limit the extent of Knutson's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from Knutson's occupancy, use, or control of the Dill Farm Property or Knutson's performance or nonperformance under this Lease Agreement.

14. STATUS OF LESSEE. The status of Knutson under this Lease Agreement is that of an independent contractor and not an employee, agent, or joint venture of the City. Knutson's operations will not be supervised by any employee or official of the City, nor will the City exercise supervision over any employee or official of Knutson. Knutson shall not represent that it is an employee, agent, or joint venture of the City. Knutson shall supply all personnel, equipment, and materials at Knutson's sole expense. Knutson is not entitled to Workers' Compensation benefits from the City, and is obligated to pay federal and state income tax on any money earned pursuant to this Lease Agreement.

15. MISCELLANEOUS PROVISIONS.

a. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

b. The failure of the City to declare a default of any of the terms, covenants, warranties, or conditions hereof to be performed, kept, or observed by Knutson shall not be construed as, or operate as, as precedent or an ongoing waiver by the City of any of the terms, covenants, warranties, or conditions herein contained, to be performed, kept, or observed by Knutson.

c. Knutson agrees that the City is under no obligation to maintain the Dill Farm Property in a particular condition or for a particular use, and Knutson explicitly waives all claims for damages of any kind or nature, whatsoever, related to the ongoing condition of the Dill Farm Property.

d. Article and section headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Lease Agreement.

e. The provisions of this Lease Agreement shall be construed as to their plain meaning, and not for or against any party based upon attribution of drafting to such party of the language in question.

f. Knutson shall perform all obligations under this Lease Agreement in strict compliance with all applicable laws, rules, charters, ordinances and regulations, existing now or as hereafter enacted or amended, of the City, and all county, state and federal entities having jurisdiction over the Dill Farm Property and any activities thereon.

g. None of the terms, conditions, or covenants in this Lease Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or Knutson receiving services or benefits under this Lease Agreement shall be only an incidental beneficiary.

h. This Lease Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. No representations, warranties, or certifications, expressed or implied, exist as between the parties, except as specifically set forth in this Lease Agreement. The parties shall only amend this Lease Agreement in a duly authorized and executed written form.

i. Invalidation of any specific provisions of this Lease Agreement shall not affect the validity of any other provision of this Lease Agreement.

j. Knutson shall not record this Lease Agreement in the real property records of any jurisdiction.

16. PAYMENT AND NOTICES. All payments required by this Lease Agreement shall be remitted by Knutson via certified U.S. mail or hand-delivered to the City at the address set forth above. Any notices given pursuant to this Lease Agreement shall be given by U.S. mail or hand-delivered at the addresses set forth above.

IN WITNESS WHEREOF, the City and Knutson have executed this Lease Agreement as of the date first set forth above.

CITY OF GREELEY,
a Colorado home rule municipality

By: _____

Mayor



By: _____

City Clerk

D. J. Jelder

KNUTSON LAND MANAGEMENT, LLC

By: Randall C Knutson
Randall Knutson

Title: OWNER

STATE OF COLORADO)
COUNTY OF WELD) ss.

The foregoing instrument was acknowledged before me on this 14 day of December 2017, by Randall Knutson, as an authorized representative of Knutson Land Management, LLC, whose signature appears above.

Witness my hand and official seal.

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

Ettie Arnold
Notary Public

My commission expires: June 13, 2021

EXHIBIT A

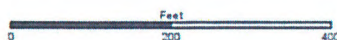


Dill Farm

Total Farmable Acreage: ~ 25.7 acres

Date: 11/21/2017
By: City of Greeley GIS, lp
File: Dill.mxd

This map is intended for display purposes only.



These map products and all underlying data were developed for use by the City of Greeley for its internal purposes only, and were not designed or intended for general use by members of the public. The City makes no representation or warranty as to its accuracy, timeliness, or completeness, and in particular, its accuracy in labeling or displaying dimensions, contours, property boundaries, or placement or location of any map features thereon. THE CITY OF GREELEY MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS OF USE FOR A PARTICULAR PURPOSE, EXPRESSED OR IMPLIED. WITH RESPECT TO THESE MAP PRODUCTS OR THE UNDERLYING DATA, Any users of these map products, map applications, or data, accepts same AS IS, WITH ALL FAULTS, and assumes all responsibility for the use thereof, and further covenants and agrees to hold the City harmless from and against all damage, loss, or liability arising from any use of this map product, in consideration of the City's having made this information available. Independent verification of all data contained herein should be obtained by any user of these map products, or the underlying data. The City disclaims, and shall not be held liable for, any and all damage, loss, or liability, whether direct, indirect, or consequential, which arises or may arise from these map products or the use thereof by any person or entity.

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 6

TITLE: ACTION: APPROVE GLOVER - F ST FARM
LEASE RENEWAL

RECOMMENDATION: APPROVE GLOVER LEASE RENEWAL AND
DELEGATE AUTHORITY TO STAFF

ADDITIONAL INFORMATION:

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

Recommended action for Consent Agenda: Water Resources staff recommends approval of the enclosed Farm Lease Agreement Renewal between the City of Greeley and Terry Glover, and also recommends that the Board delegate authority to staff to renew this lease agreement in the future, provided that the terms of the agreement remain unchanged.

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 7

TITLE: ACTION: APPROVE LEBSACK FARM LEASE

RECOMMENDATION: APPROVE LEBSACK FARM LEASE

ADDITIONAL INFORMATION:

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

Recommended action for Consent Agenda: Water Resources staff recommends approval of the enclosed Farm Lease Agreement between the City of Greeley and Leland Lebsack.

FARM LEASE AGREEMENT

This FARM LEASE AGREEMENT ("Lease Agreement") is entered this ____ day of _____ 2019, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation whose address is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 ("Greeley"), and LELAND LEBSACK, in his individual capacity, whose address is 21003 County Road 90, Pierce, Colorado 80650 ("Lebsack") (collectively the "Parties").

RECITALS

WHEREAS, Greeley owns three parcels of agricultural property consisting collectively of approximately three hundred and fifteen (315) acres of irrigable farmland located in Weld County, Colorado, which parcels are legally described on Exhibit A, attached hereto and incorporated herein, ("Real Estate"); and

WHEREAS, Greeley owns three and one-half (3½) shares of capital stock in the Water Supply & Storage Company represented by Stock Certificate No. 6729 for one-half (½) share, Stock Certificate No. 6728 for two and one-half (2½) shares, and Stock Certificate 6769 for one-half (½) share ("Water Rights"), which have been historically used to irrigate the Real Estate; and

WHEREAS, Lebsack leases by separate agreement from Ronald Crego an additional parcel of agricultural real property consisting of approximately forty (40) acres of irrigable farmland in Weld County that has been historically irrigated by a portion of the Water Rights, which parcel is more particularly described on Exhibit B, attached hereto and incorporated herein ("Henry Farm"); and

WHEREAS, Lebsack desires to lease the Water Rights and the Real Estate (collectively "Property") for agricultural purposes, and Greeley is willing to lease the Property to Lebsack under the terms of this Lease Agreement; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Greeley and Lebsack agree as follows.

AGREEMENT

1. **FARM LEASE.** Greeley hereby leases the above-described Property to Lebsack for agricultural purposes, subject to the terms and conditions of this Lease Agreement.

2. **TERM OF LEASE.** The initial term of this Lease Agreement begins on the date it is mutually executed by the Parties and ends on December 31, 2028 ("Lease Term"). The Lease Agreement expires at the end of this initial Lease Term, but may be renewed for one subsequent term of five years upon execution of a written mutual agreement of renewal by the Parties.

3. **ANNUAL LEASE AMOUNT.** Lebsack shall pay to Greeley an Annual Lease Amount for his use and occupancy of the Property, in two equal installments due no later than March 31 and December 15 of each year during the term of this Lease Agreement. The Annual Lease Amount for the first year of the Lease Term is twenty-eight thousand, two hundred and seventy-five dollars (\$28,275.00), which total amount is equal to eighty-five dollars (\$85.00) per acre for approximately three hundred and fifteen (315) acres of irrigable farmland and one thousand five hundred dollars (\$1,500.00) for lease of the additional one-half share of WSSC associated with the Henry Farm. For the first year of the Lease Term, the first installment of fourteen thousand, one hundred thirty-seven dollars and fifty cents (\$14,137.50) is due within 30 days of mutual execution of this Lease Agreement by the Parties, and the

second installment of fourteen thousand, one hundred thirty-seven dollars and fifty cents (\$14,137.50) is due no later than December 15, 2019.

a. The Annual Lease Amount shall be adjusted each year during the term of this Lease Agreement in accordance with the increase in the Consumer Price Index ("CPI") for the Denver-Boulder-Greeley Region, using the CPI level on the date this Lease Agreement is executed as a basis for comparison. Regardless of any future decrease in the CPI, the Annual Lease Amount shall never be less than \$89.76 per acre.

4. IMPROVEMENTS AND CONDITION OF PROPERTY. The Property includes all existing improvements, structures, and fixtures placed, constructed, installed or located on the Real Estate; all fences, gates, plants, trees, landscaping and other appurtenances, if any, upon, over or under the Real Estate; equipment, machinery and other items of personal property (including, but not limited to, two center-pivot irrigation sprinkler systems and all associated pumps, motors, pipes, and fuel injection systems), if any, upon, over or under the Real Estate (collectively "Improvements"). Prior to signing this Lease Agreement, Lebsack has inspected or caused to be inspected the Property, including all Improvements, and acknowledges that the Property is being leased "as-is." No additional representations, statements or warranties, whether express or implied, have been made by or on behalf of Greeley as to the condition of the Property or of any Improvements located thereon and used in connection with the Property. Lebsack shall make no claim nor hold Greeley liable for any defect in the Property, the Improvements, or any limitation on the use of the Property, including the Improvements or any portion thereof, as irrigated farmland. Lebsack also acknowledges that the mineral estate previously associated with the Property has been severed, and that the surface of the Property may be subject to development of those mineral rights. In the event that surface development of the mineral estate renders a portion of the Property unavailable for irrigated agriculture, the Parties agree to amend the acreage used to calculate Annual Lease Amount accordingly.

5. WATER RIGHTS.

a. Lebsack may use the Water Rights for agricultural irrigation of the Real Estate and the Henry Farm at no additional charge beyond the Annual Lease Amount, subject to the terms and conditions of this Lease Agreement.

b. Lebsack shall deliver to Greeley a completed Historical Use Affidavit and Questionnaire, in the form attached hereto as Exhibit C, on or before December 15 each year during the term of this Lease Agreement. Lebsack acknowledges that Greeley may file an application to change the use of the Water Rights with the Division 1 Water Court for the State of Colorado during the term of this Lease Agreement. Lebsack shall cooperate with Greeley and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from Greeley, Lebsack shall provide information regarding use of the Water Rights in preparation for and during any proceeding before the Division 1 Water Court.

c. Greeley shall be responsible for any ditch, reservoir, or augmentation company assessments or other charges and expenses attributable to the Water Rights.

d. Lebsack shall have no right to any rebates or other payments from Greeley for the lease of transmountain return flows associated with the Water Rights.

e. Lebsack agrees to use the Water Rights, and the water delivered pursuant to this Lease Agreement, only for agricultural irrigation of the Real Estate and the Henry Farm.

f. Lebsack agrees to take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as abandonment of the Water Rights. Lebsack shall provide written notice to Greeley on or before February 1 in advance of any irrigation season in which he no longer intends to irrigate the Real Estate or the Henry Farm, or any portion thereof, with the Water Rights.

g. Lebsack shall not rent, sublease, nor otherwise convey the right use the Water Rights to third parties, nor allow any third parties to use the Water Rights or water delivered pursuant to said Water Rights on lands other than the Real Estate and Henry Farm or for any uses other than described in this Lease Agreement.

h. Lebsack shall comply with all of the rules, regulations, and policies of the ditch and reservoir companies that deliver the Water Rights.

i. Greeley makes no warranty, guarantee, nor representation of any kind regarding the amount or quality of water that will be yielded or delivered pursuant to the Water Rights.

j. Greeley shall not be liable for any failure of delivery of water pursuant to the Water Rights due to drought, other force of nature, or due to the failure of any ditch and/or reservoir company infrastructure.

6. AUTHORIZED USE OF THE PROPERTY.

a. Lebsack shall occupy and use the Property solely for agricultural purposes.

b. Lebsack shall be responsible for the proper care of the Property consistent with sound agricultural practices.

c. Lebsack shall apply all weed control chemicals and fertilizers in compliance with applicable federal, state, and local regulations.

d. Lebsack shall irrigate the Real Estate and Henry Farm with the Water Rights and the water delivered pursuant to this Lease Agreement in accordance with their historical use on said properties.

e. Lebsack shall furnish, at Lebsack's sole expense, all labor, machinery, fertilizer, weed spray, and other items needed for farming the Property.

7. LEBSACK'S COVENANTS AND AGREEMENTS.

a. Lebsack shall maintain and make any necessary repairs, at Lebsack's expense, to any lateral ditches, headgates, and other personal property necessary to deliver the Water Rights to the Real Estate and the Henry Farm and to the pivots, wells, siphons, and pumping lagoons used in connection with the Water Rights on the Real Estate and the Henry Farm.

b. Lebsack shall keep the Property, including any non-irrigated land, clear of weeds.

c. Lebsack shall not assign this Lease Agreement nor sublet the Property or any part thereof without the prior written consent of Greeley, which consent shall be in the sole discretion of Greeley.

d. Lebsack shall not construct, nor permit construction of any structure, building or other improvement, temporary or otherwise, on the Property without the prior written consent of Greeley, which consent shall be in the sole discretion of Greeley.

e. Lebsack shall not erect, paint, nor maintain any signs on the Property without the prior written consent of Greeley, which consent shall be in the sole discretion of Greeley.

f. Lebsack shall not allow any noise, odors, fumes, or vibrations on the Property other than those caused by normal agricultural practices that would cause disruption of normal activities on adjacent properties.

g. Lebsack shall not use nor permit to be used any insecticide, pesticide, rodenticide, herbicide, or other chemical substance on the Property for weed, pest, or rodent control or fertilization which is prohibited by any federal, state or local statute, ordinance, resolution, rule or regulation.

h. Lebsack shall not directly nor indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property.

i. Lebsack agrees, covenants, and warrants to maintain the Property throughout the term of this Lease Agreement in the same repair and condition in which he received possession of the Property at the commencement of this Lease Agreement.

k. Lebsack agrees to deliver up and surrender to Greeley possession of the Property at the expiration or termination of this Lease Agreement.

l. Lebsack agrees to pay any utilities necessarily used in connection with the Property.

8. INDEMNIFICATION.

a. Lebsack assumes the risk of loss or damage to any crops on the Property and the Henry Farm, whether from windstorm, fire, earthquake, snow, water run-off, soil conditions, or any other causes whatsoever.

b. Lebsack releases and agrees to indemnify, defend and hold harmless Greeley, its agents, officers, employees, and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from Lebsack's operations or use of the Property under this Lease Agreement.

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

9. HAZARDOUS WASTE.

a. Lebsack shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Property by Lebsack, its agents, employees, contractors, or invitees without the prior written consent of Greeley. Greeley shall not unreasonably withhold consent so long as Lebsack demonstrates to Greeley's reasonable satisfaction that such Hazardous Material is necessary to Lebsack's

use of the Property for agricultural purposes, so long as any chemicals (including without limitation fertilizer, herbicides, insecticides) are applied in conformance with good farming methods, applicable rules and regulations and the label directions of each chemical and kept, and stored in a manner that complies with all laws regulating such chemicals.

b. If Lebsack breaches the obligations stated herein, or if the presence of Hazardous Material on the Property caused or permitted by Lebsack results in contamination of the Property, or if contamination of the Property by Hazardous Material otherwise occurs for which Lebsack is legally liable to Greeley for damage resulting therefrom, then Lebsack shall indemnify, defend, and hold Greeley harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the lease term as a result of such contamination. This indemnification of Greeley by Lebsack includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Property.

c. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by Lebsack results in any contamination of the Property, Lebsack shall promptly take all actions at its sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Material to the Property; provided that Greeley's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Property.

d. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321; (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6903; (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601; or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. § 6991.

10. RESERVATIONS. Greeley reserves its rights under this Lease Agreement to (i) have its officers, employees, and representatives enter and inspect or protect the Property at any time for any purpose; (ii) use any portion of the Property for public utilities and as ingress and egress for public use and rights of way; (iii) use, repair, install, replace, and maintain public utilities and rights-of-way on, over, or under the Property; and (iv) use any portion of the Property as a site for the application of digested biosolids.

11. TERMINATION FOR CAUSE.

a. Lebsack agrees to observe and perform the terms and conditions of this Lease Agreement. If Lebsack fails to make payment of the Annual Lease Amount, or any part thereof, or if Lebsack fails to observe or perform any term or condition of this Lease Agreement, then Greeley, upon written notice to Lebsack, may in its sole discretion terminate this Lease Agreement and re-enter and repossess the Property, with or without legal proceedings, using such force as may be necessary, and remove any property belonging to Lebsack without prejudice to any claim for rent or for the breach of

covenants hereof. Lebsack agrees to indemnify and hold Greeley harmless from and against any costs for the removal and storage of Lebsack's property incurred by Greeley under the provisions of this section.

b. If Greeley determines that Lebsack has created a public safety hazard, then Greeley may immediately take action to secure the safe operation of the Property, including without limitation, terminating this Lease Agreement and/or removing Lebsack and any of Lebsack's equipment or crops from the Property.

c. If Lebsack, after the expiration or termination of this Lease Agreement, remains in possession of the Property without a written agreement, the holding over shall constitute a month-to-month tenancy on the terms of this Lease Agreement at a monthly rental rate equivalent to one-twelfth of the Lease Amount as adjusted in accordance with Section 3(a) above, payable in advance on the first day of each month. No payments of money by Lebsack after the expiration or termination of this Lease Agreement shall constitute a renewal of this Lease Agreement in the absence of a written mutual agreement.

12. INSURANCE REQUIREMENTS.

a. Lebsack shall purchase and maintain for the full period of this Lease Agreement, including any additional extension periods, at Lebsack's sole expense, insurance policies providing coverage as follows:

i. Farm liability insurance, including coverage for bodily injury, property damage, contractual liability, and broad-form property damage and owner/contractor's protective coverage, with a minimum coverage of not less than \$1,000,000.00 or as approved by the City of Greeley Risk Manager; and

ii. Workers' compensation and employers' liability insurance, if applicable, which shall cover the obligations of Lebsack in accordance with the provisions of the Workers' Compensation Act of Colorado, as amended.

b. Before commencement of the lease term, Lebsack must present all applicable insurance policies, certificates of insurance, and endorsements, along with a signed copy of this Lease Agreement, to the City of Greeley Risk Manager, and receive the Risk Manager's written approval as to the adequacy of such insurance coverage.

c. The insurance policies shall contain an endorsement naming the City of Greeley, a Colorado home rule municipal corporation, and its council members, officers, agents, employees, and volunteers as additional insured parties with respect to all activities Lebsack may perform under this Lease Agreement. Moreover, such endorsement shall include a notice provision requiring 30 days written notice to Greeley before any cancellation.

d. Only insurance companies with authority to issue policies in the State of Colorado shall provide insurance coverage under this Lease Agreement.

e. For the term of this Lease Agreement, Lebsack shall not cancel, materially change, or fail to renew the insurance coverage, and Lebsack shall notify Greeley of any material reduction or exhaustion of aggregate policy limits. If Lebsack fails to purchase or maintain the insurance coverage stated in this Lease Agreement, Greeley shall have the right to procure such insurance coverage at Lebsack's expense.

agreement to sell any portion of the Real Estate, Greeley may assign or terminate, in full or in part, this Lease Agreement by providing an advance notice thereof to Lebsack of 60 days.

k. This Lease Agreement is an integration of the entire understanding of the Parties with respect to the matters set forth. No representations, warranties, or certifications, expressed or implied, exist between the Parties, except as specifically set forth in this Lease Agreement. The Parties shall only amend this Lease Agreement in a duly authorized and executed writing.

15. **NOTICE.** Any notice or payment required by this Lease Agreement shall be provided by U.S. mail or hand delivery to Greeley or to Lebsack at the addresses set forth above, unless the party to receive such notice or payment provides to other party written notice of a change of the address listed above.

IN WITNESS WHEREOF, the City of Greeley and Leland Lebsack have executed this Lease Agreement as of the date set forth in the preamble.

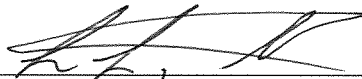
CITY OF GREELEY,
a Colorado home rule municipal corporation

Attest:

By: _____
Mayor

By: _____
City Clerk

LELAND LEBSACK

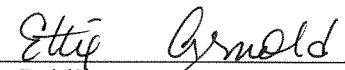


Leland Lebsack

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

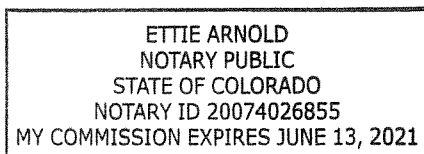
The foregoing instrument was acknowledged before me this 15 day of March
2019 by Leland Lebsack, whose signature appears above.

Witness my hand and official seal.



Notary Public

My commission expires: 6/13/2021



f. Nothing in this Section 12 shall limit the extent of Lebsack's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from Lebsack's occupancy, use, or control of the Property or Lebsack's performance or nonperformance under this Lease Agreement.

13. NO VESTED INTEREST IN SHARES OR JOINT VENTURE. This Lease Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Greeley grants no interest in the Property to Lebsack other than as explicitly set forth in this Lease Agreement. Lebsack shall make no claim to any rights, title, or interest in the Property other than as explicitly set forth in this Lease Agreement. This Lease Agreement does not create a partnership or joint venture of any kind between the Parties, and Lebsack shall bear the entirety of any loss, cost, or expense incurred through its use of the Property.

14. MISCELLANEOUS PROVISIONS.

a. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

b. No waiver or default by Greeley of any of the terms, covenants, warranties, or conditions hereof to be performed, kept, or observed by Lebsack shall be construed as, or operate as, a precedent or future waiver by Greeley of any of the terms, covenants, warranties, or conditions herein contained, to be performed, kept, or observed by Lebsack.

c. Lebsack agrees that Greeley is under no obligation to maintain the Property in a particular condition or for a particular use, and Lebsack waives all claims for damages of any kind or nature, whatsoever, resulting therefrom.

d. Article and section headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Lease Agreement.

e. The provisions of this Lease Agreement shall be construed as to their fair meaning, and not for or against any party based upon the responsibility of either party for drafting the language in question.

f. Lebsack shall perform all obligations under this Lease Agreement in strict compliance with all applicable laws, rules, charters, ordinances and regulations, as now exist or are later enacted or amended, of Greeley, and all county, state and federal entities having jurisdiction over the Property.

g. None of the terms, conditions, or covenants in this Lease Agreement shall give or allow any claim, benefit, or right of action by any third person not a party to this Lease Agreement. Any person other than Greeley or Lebsack receiving services or benefits under this Lease Agreement is only an incidental beneficiary.

h. Invalidity of any specific provisions of this Lease Agreement shall not affect the validity of any other provision of this Lease Agreement.

i. Lebsack shall not record this Lease Agreement in the real property records of any jurisdiction.

j. Lebsack acknowledges that Greeley may sell any portion or all of the Real Estate and retain the Water Rights during the term of this Lease Agreement. In the event it enters into an

EXHIBIT A
FARM LEASE AGREEMENT
(Lebsack)

The Real Estate includes the real property legally described as follows:

Balmer Farm: Lot B of Recorded Exemption 582, recorded April 27, 1983, in Book 0994, Reception No. 01924815, Weld County Records, being a part of the East Half (E1/2) of Section Four (4), Township Seven (7) North, Range Sixty-Six (66) West of the 6th P.M., Weld County, Colorado.

McWilliams Farm: Lot D of Recorded Exemption No. 0707-16-04 RECX15-0084, recorded October 21, 2015, at Reception No. 4151984, Weld County Records, being a part of the Southeast ¼ of Section 16, Township 7 North, Range 66 West of the 6th P.M., Weld County, Colorado.

Danielson Farm: Lot B of Recorded Exemption No. 0707-16-1 RECX 170100, recorded August 31, 2017, at Reception No. 4331717, Weld County Records, being a part of the South ½ of the Northeast ¼ of Section 16, Township 7 North, Range 66 West of the 6th P.M., Weld County, Colorado.

Said parcels consisting collectively of approximately 315 acres.

EXHIBIT B
FARM LEASE AGREEMENT
(Lebsack)

The Henry Farm includes the real property legally described as follows:

A tract of land located in the South Half (S1/2) of the Northeast Quarter (NE1/4) of Section Sixteen (16), Township Seven (7) North, Range Sixty-Six (66) West of the 6th P.M., being more particularly described as follows: COMMENCING at the East Quarter Corner (E1/4Cor) of Section 16, and considering the East line of said Section 16 as bearing North 00°09'27" West, with all other bearings contained herein relative thereto; thence North 00°09'27" West along said East section line, 402.90 feet to the true point of beginning; thence North 61°31'43" West, 655.95 feet; thence North 89°59'31" West, 269.82 feet; thence South 87°15'43" West 1785.40 feet, thence South 00°25'17" East, 662.15 feet, thence South 89°18'24" West, 34.10 feet; thence North 00°04'44" West, 1327.06 feet; thence North 89°18'24" East, 2658.50 feet to a point on the East line of said Section 16; thence South 00°09'27" East along said East section line, 924.14 feet to the true point of beginning.

EXHIBIT C
FARM LEASE AGREEMENT
(Lebsack)
Historical Use Affidavit and Questionnaire

[5 pages]

AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

WATER RIGHTS:

Ditch or Reservoir Company: _____

Shares or Interest: _____

Name and address of owner and user of water rights:

Owner: _____

User(s): _____

Year water rights were used as described: _____

IRRIGATED LAND:

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

_____.

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

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

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

Signed and dated this ____ day of _____, 201__.

STATE OF COLORADO)
) ss.

COUNTY OF _____)

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me by Leland Lebsack, this ____ day of _____, 201__.

Witness my hand and Official Seal.

Notary Public
My commission expires: _____

QUESTIONNAIRE REGARDING USE OF WATER SHARES

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

1. Name of person completing this questionnaire: _____
Mailing Address: _____
Telephone: _____
Facsimile: _____
Email Address: _____
2. The information provided below pertains to ____ shares of the _____
Company, represented by Certificate No. _____ (hereinafter "Shares").
3. Did you use the Shares pursuant to a Lease Agreement? _____
Date of the Lease: _____
Name of Lessee (if different from Question 1): _____
Name of Lessor: _____
4. The information in this questionnaire relates to my use of the Shares during the 20__ irrigation
season (hereinafter "Lease Year").
5. Do you still own the farm or parcel irrigated by these Shares? _____
6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the
Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company?

7. What is the legal description of the farm or parcel on which these Shares were
used? _____
8. What is the total size of the farm or parcel? _____ acres.
9. What is the size of the area(s) on the farm or parcel that was irrigated? _____ acres.
10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the
Shares? _____ acres.
11. Please provide the following information regarding how the water from these Shares is delivered.
 - Location and ID Number of the head gate at the main ditch: _____.
 - Name and general location of any lateral(s) delivering the water to the land historically
irrigated: _____.

- Identification of any carrier or lateral ditch stock required to deliver these rights: _____.
- Approximate location of pumps, if used: _____.
- Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.

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

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

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

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

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

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

- | | | |
|------------|-------------|-----------|
| i. Crop: | Percentage: | Location: |
| ii. Crop: | Percentage: | Location: |
| iii. Crop: | Percentage: | Location: |
| iv. Crop: | Percentage: | Location: |
| v. Crop: | Percentage: | Location: |
| vi. Crop: | Percentage: | Location: |

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

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

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

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

Signature: _____

Date: _____

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 8

TITLE: ACTION: APPROVE EHEART WATER LEASE

RECOMMENDATION: APPROVE EHEART WATER LEASE

ADDITIONAL INFORMATION:

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

Recommended action for Consent Agenda: Water Resources staff recommends approval of the enclosed Water Lease between the City of Greeley and Brooks Eheart.

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 9

TITLE: ACTION: APPROVE DYECREST WATER
LEASE

RECOMMENDATION: APPROVE DYECREST WATER LEASE

ADDITIONAL INFORMATION:

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

Recommended action for Consent Agenda: Water Resources staff recommends approval of the enclosed Water Lease between the City of Greeley and Dyecrest Dairy.

IRRIGATION WATER LEASE AGREEMENT

This IRRIGATION WATER LEASE AGREEMENT ("Agreement") is entered into this ____ day of _____ 2019, by and between the CITY OF GREELEY, a municipal corporation of the State of Colorado, ("City"), whose address is 1001 11th Ave, 2nd Floor, Greeley, Colorado 80631 and DYECREST DAIRY, LLC, a Colorado limited liability company, whose address is 1137 North County Road 1, Fort Collins, CO 80524 ("Lessee") (collectively "the Parties").

Recitals

WHEREAS, the City owns those certain water rights represented by two and one-half (2½) Shares of capital stock in the Water Supply & Storage Company represented by Stock Certificate No. 6455 (the "Water Rights").

WHEREAS, the Lessee desires to lease the Water Rights from the City for agricultural irrigation on the property located at 6809 and 6821 E. County Road 48 Fort Collins, CO 80524 more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Property"); and

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

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

Agreement

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

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

3. **Annual Lease Amount and Administrative Fee.** The Lessee shall pay to the City an Annual Lease Amount equal to all assessments, charges, and other expenses due and attributable to the Water Rights paid by the City. The Annual Lease Amount shall not be reduced to reflect rebates or other credits attributable to leasing the transmountain return flows associated with the Water Rights. Lessee shall also pay the City an Annual Administrative Fee in the amount of one hundred and fifty dollars (\$150.00) per year. The City will provide an invoice of the Annual Lease Amount and Annual Administrative Fee to the Lessee, and Lessee shall deliver payment of that total amount to the City no later than (i) May 15 of the then current irrigation year, or (ii) within fifteen days of receipt of such invoice from the City. The Lessee

shall also remit to the City an additional charge equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

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

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

6. **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 its use of the Water Rights on the Property.

7. **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.

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

9. **Indemnification.** Lessee agrees to exercise its rights under this Agreement at its own risk. Lessee shall indemnify and hold harmless the City from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended 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.

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

11. **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 10 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 10 above.

- (a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraph 4 or Paragraph 5 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, the City may immediately terminate this Agreement by written notice to the Lessee.
- (b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

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

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

14. **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.

15. **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.



16. **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.

17. **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.

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

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

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

CITY OF GREELEY

ATTEST:

By: _____
Mayor

By: _____
City Clerk

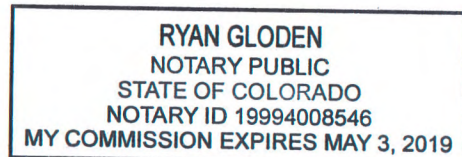
LESSEE
DYECREST DAIRY, LLC

By: T W Dye owner/mgr

STATE OF COLORADO)
) ss.
COUNTY OF Lincoln)

The foregoing instrument was acknowledged before me this 5th day of March 2019 by Terence W. Dye, whose signature appears above as an authorized representative of the Lessee.

Witness my hand and official seal.



[Signature]
Notary Public
My commission expires: 5-3-2019

EXHIBIT A
LEGAL DESCRIPTION

Lot 1, Rodenberger M.R.D. S-143-91, County of Larimer, State of Colorado; and

All that part of the NE1/4 of the SE1/4 of Section 12, Township 7 North, Range 68 West of the 6th P.M., lying Northerly and Easterly of the Colorado & Southern Railway Company's right of way, described as follows:

Beginning at the intersection of the North line of said NE1/4 of SE1/4, with the West line of the County Road on the East of said NE1/4 of SE1/4, thence West along said North line, 532 feet, more or less, to a point on the Northerly boundary line of said Colorado & Southern Railway Company's right of way, said point being 25 feet Northeasterly of and at right angles to the center line of said Colorado & Southern Railway, thence Southeasterly on a curve to the right with a radius of 741.8 feet, 25 feet from and parallel to the said center line of said Colorado & Southern Railway, 955 feet, more or less to the West line of said County road, thence North along said West line 717.2 feet to the point of beginning, County of Larimer, State of Colorado.

Excepting from the above, those portions conveyed to The Fort Collins Development Railway Company by Deed recorded November 14, 1907, in Book 245 at Page 87 and Deed recorded November 14, 1907, in Book 245 at Page 89.

(Street Addresses: 6809 and 6821 East County Road 48, Fort Collins, Colorado)

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 10

TITLE: ACTION: APPROVE PEPPLER WATER LEASE

RECOMMENDATION: APPROVE PEPPLER WATER LEASE

ADDITIONAL INFORMATION:

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

Recommended action for Consent Agenda: Water Resources staff recommend approval of the enclosed Water Lease between the City of Greeley and Parry Peppler.

IRRIGATION WATER LEASE AGREEMENT

This IRRIGATION WATER LEASE AGREEMENT ("Agreement") is entered into this 27 day of February 2019, by and between the CITY OF GREELEY, a municipal corporation of the State of Colorado, ("City"), whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 and PARRY E. PEPLER, in his individual capacity, whose address is 33429 Faith Lane, Eaton, Colorado 80615 ("Lessee") (collectively "the Parties").

Recitals

WHEREAS, the Lessee is the owner and legal occupant of certain real property located in Weld County, Colorado comprising approximately three hundred and twenty (320) acres, which property is more particularly described as the E½ SE¼ of Section 18, and a parcel in the W½ of Section 17 lying South and East of Highway 392, all in Township 6 North, Range 63 West of the 6th P.M. ("Property"); and

WHEREAS, the City owns those certain water rights represented by 4 shares of Capital Stock in the New Cache la Poudre Irrigating Company, Certificate No. 4944 ("Water Rights"), which may be used to irrigate the Property; and

WHEREAS, the Water Rights were historically used, along with other water rights, to irrigate certain real property located in Weld County, Colorado, more particularly described as Lots 1, 2, 3, 4, 5, 6, 7 and 8 of BUXMAN ESTATES, which property is not the subject of this Agreement ("Buxman Farm"); and

WHEREAS, the Buxman Farm is encumbered by that certain Restrictive Dry-Up Covenant, Grant of Easement, Warranty of First Right to Dry-Up Credit, and Agreement to Assist originally recorded at Rec. No. 3486170 and subsequently assigned to the City at Rec. No. 4040108 ("Dry-Up Covenant"), which Dry-Up Covenant also runs with and benefits the Water Rights; and

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

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

Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

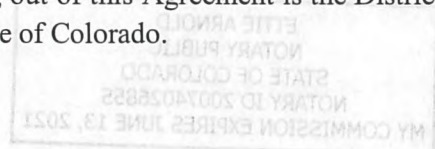
(b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

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

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

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

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



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

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

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

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

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

CITY OF GREELEY

ATTEST:

By: _____
Mayor

By: _____
City Clerk

LESSEE

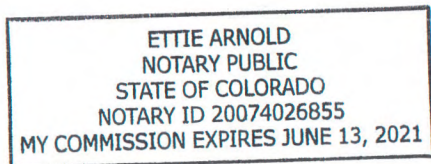
PARRY E. PEPPLER

By: Parry E. Peppler

STATE OF COLORADO)
) ss.
COUNTY OF Weld)

The foregoing instrument was acknowledged before me this 27 day of February 2019 by Parry Peppler, whose signature appears above as Lessee.

Witness my hand and official seal.



Ettie Arnold
Notary Public
My commission expires: 6/13/2021



END
CONSENT
AGENDA

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE _____ NO ENCLOSURE _____

ITEM NUMBER: 11

TITLE: ACTION: ANY ITEMS PULLED FROM
CONSENT AGENDA

RECOMMENDATION: TO BE DETERMINED

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 12

TITLE: ACTION: APPROVE SHEEP DRAW WATER
LEASE

RECOMMENDATION: APPROVE SHEEP DRAW WATER LEASE

ADDITIONAL INFORMATION:

Water Resources staff recommend approval of the enclosed Water Lease between the City of Greeley, Sheep Draw Farms and Wiedeman Farms & Ranch, LLC. This agreement is for 14 shares in the Greeley and Loveland Irrigation Company and 2.5 rights in the Loveland and Greeley Reservoir Company. The proposed lease expires December 31, 2026 with option to renew for one subsequent term of five years. The annual cost of the lease is 105 percent of all assessments, charges and other expenses attributable to the Water Rights paid by the City.

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 13

TITLE: ACTION: APPROVE GLOVER GRAZING
LEASE

RECOMMENDATION: APPROVE GLOVER GRAZING LEASE

ADDITIONAL INFORMATION:

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

LEASE AGREEMENT

This LEASE AGREEMENT ("Lease Agreement") is entered this ____ day of _____ 2019, 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 (the "City" or "Greeley") and TERRY GLOVER, doing business as Glover Farms, whose address is 3907 W. 4th Street Road, Greeley, Colorado 80634 ("Glover").

RECITALS

WHEREAS, Greeley owns agricultural property consisting of approximately 136 Acres of land located in part of the West Half of the West Half of Section 34, Township 6 North, Range 66 West of the 6th P.M., in Weld County, Colorado, which is more fully depicted on Exhibit A, attached hereto and incorporated herein ("Property"); and

WHEREAS, Glover desires to lease the Property for grazing and farming purposes, and Greeley is willing to lease the Property to Glover for such purposes under the terms of this Lease Agreement; and

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

AGREEMENT

1. **LEASE.** Greeley hereby leases to Glover the above-described Property for grazing and farming purposes, subject to the terms and conditions of this Lease Agreement.

2. **TERM OF LEASE.** The term of this Lease Agreement begins on the date it is fully executed and ends on December 31, 2019. The Lease Agreement expires at the end of this initial term, but will automatically renew for up to four subsequent terms of one year each. Notwithstanding the foregoing, this Lease Agreement may be terminated for any reason by Greeley or by Glover prior to any renewal term by delivering an advance written notice to the other party on or before March 1 of that calendar year.

3. **ANNUAL LEASE AMOUNT.** Glover shall pay to Greeley an Annual Lease Amount for his use of the Property, in two equal installments due no later than March 31 and December 15 of each year during this Lease Agreement. The Annual Lease Amount is nine hundred dollars (\$900.00). The annual first installment of four hundred and fifty dollars (\$450.00) is due no later than March 31, and the second installment of four hundred and fifty dollars (\$450.00) is due no later than December 15 each year during this Lease Agreement.

a. For each year this Lease Agreement is renewed in accordance with Paragraph 2 above, the Lease Amount shall be adjusted in accordance with the increase in the Consumer Price Index ("CPI") for the Denver-Boulder-Greeley Region, using the CPI level on the date this Lease Agreement is executed as the basis for comparison. Regardless of any future decreases in the CPI, the Lease Amount shall never be less than \$900.00.

4. **IMPROVEMENTS.** There are no structures or improvements on the Property to which Glover is entitled use by this Lease Agreement.

5. **CONDITION OF PROPERTY.** Prior to signing this Lease Agreement, Glover has inspected the Property and acknowledges that the Property is being leased "as-is." No additional

representation, statement or warranty, express or implied, has been made by or on behalf of Greeley as to the condition of the Property. In no event shall Greeley be liable for any defect in the Property or for any limitation on its anticipated uses.

6. AUTHORIZED USE OF THE PROPERTY.

a. Glover shall occupy and use the Property solely for grazing purposes, subject to the exception for farming set forth in Section 6(b) below.

b. Glover may use approximately 10 acres of the northern portion of the Property, which acreage is depicted more particularly on Exhibit A, for farming purposes. There are no water rights to which Glover is entitled use by this Lease Agreement. Glover is solely responsible for acquiring a separate right to use any irrigation water necessary for farming on the Property.

c. Glover shall be responsible for the proper care of the Property consistent with sound agricultural practices, including the avoidance of overgrazing the Property.

d. Glover shall not apply any weed control chemicals or fertilizers prohibited by applicable federal, state, or local regulations.

e. Glover shall furnish, at Glover's sole expense, all labor, machinery, fertilizer, and other materials needed for his use and occupation of the Property.

7. LESSEE'S COVENANTS AND AGREEMENTS.

a. Glover acknowledges that he is solely responsible for ensuring that all livestock are confined to the Property and not permitted to roam onto the Poudre River Trail or other adjacent parcels. Glover shall take all necessary and appropriate action to ensure that livestock are confined to the Property.

b. Prior to any grazing uses on the Property, Glover shall install electric wire fencing to separate the Property from the Poudre River Trail and other neighboring parcels, to ensure that all livestock are contained to the Property. Glover shall utilize no less than two strands of the electric wire fencing to ensure that livestock of all sizes are confined. Such electric wire fencing shall be installed at a distance no less than 30 feet from the Poudre River Trail at any point along the perimeter of the Property. The fencing shall comply with the excerpt from Colorado Parks and Wildlife's "Fencing for Wildlife" guide, attached hereto as Exhibit B.

c. Glover shall install and maintain signage on the fence line inside the edge of the Property to ensure that Poudre River Trail users and all other passersby are given adequate warning that the electric wire fencing is charged. Such signage shall be installed on every fifth post on the fence line inside the edge of the Property, or more frequently and in different locations if deemed necessary by the City in the future.

d. Glover acknowledges that the Property is subject to that certain Deed of Conservation Easement executed by and between the City, the Town of Windsor, and Larimer County on September 6, 2016 and recorded in the real property records of Weld County at Reception No. 4239929 ("Conservation Easement"), and that he has received a copy of the Conservation Easement and understands the terms and conditions therein. Glover shall conduct all activities pursuant to this Lease Agreement in a manner that is also consistent with the terms and conditions of the Conservation Easement.

e. Glover shall keep the northern portion of the Property that may be used for farming purposes, in accordance with Section 6(b) above, free of noxious weeds. Greeley staff shall keep the remainder of the Property free of noxious weeds. Glover shall cooperate with Greeley in all such efforts and facilitate access to the Property by Greeley staff at all reasonable times for the purposes of weed eradication and associated activities.

f. Glover shall not assign this Lease Agreement nor sublet the Property or any part thereof, nor assign, pledge, or mortgage Glover's interest in this Lease Agreement without the prior written consent of Greeley, which consent shall be in the sole discretion of Greeley.

g. Glover shall not construct, nor permit construction of any structure, building or other improvement, temporary or otherwise, on the Property without Greeley's prior written consent, which consent shall be in the sole discretion of Greeley.

h. Glover shall not erect, paint, or maintain any signs on the Property without securing the prior written consent of Greeley, which consent shall be in the sole discretion of Greeley.

i. Glover shall not allow any noise, odors, fumes, or vibrations on the Property other than those caused by normal agricultural practices that would cause disruption of normal activities on adjacent properties.

j. Glover shall not use or permit to be used any insecticide, pesticide, rodenticide, herbicide, or other chemical substance on the Property for weed, pest, or rodent control or fertilization which is prohibited by any federal, state or local statute, ordinance, resolution, rule or regulation.

k. Glover shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property.

l. Glover agrees, covenants, and warrants to maintain the Property in as good repair and condition as at the commencement of this Lease Agreement.

m. Glover agrees to deliver up and surrender to Greeley possession of the Property at the expiration or termination of this Lease Agreement.

8. INDEMNIFICATION.

a. Glover assumes the risk of loss or damage to any livestock, crops, or any other personal property located on the Property whether from windstorm, fire, earthquake, snow, water run-off, soil conditions, or any other causes whatsoever.

b. Glover releases and agrees to indemnify, defend and hold harmless Greeley, its agents, officers, employees, and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from Glover's operations under this Lease Agreement, including, but not limited to, Glover's operation of the required electric wire fencing to contain livestock to the Property.

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

9. HAZARDOUS WASTE.

a. Glover shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Property by Glover, his agents, employees, contractors, or invitees without the prior written consent of Greeley (which Greeley shall not unreasonably withhold consent so long as Glover demonstrates to Greeley's reasonable satisfaction that such Hazardous Material is necessary or useful to Glover's use of the Property for grazing or farming purposes, and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Material).

b. If Glover breaches the obligations stated herein, or if the presence of Hazardous Material on the Property caused or permitted by Glover results in contamination of the Property, or if contamination of the Property by Hazardous Material otherwise occurs for which Glover is legally liable to Greeley for damage resulting therefrom, then Glover shall indemnify, defend, and hold Greeley harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the lease term as a result of such contamination. This indemnification of Greeley by Glover includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Property.

c. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by Glover results in any contamination of the Property, Glover shall promptly take all actions at its sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Material to the Property; provided that Greeley's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Property.

d. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321; (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6903; (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601; or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. § 6991.

10. RESERVATIONS. Greeley reserves its rights under this Lease Agreement to have its officers, employees, and representatives enter and inspect or protect the Property at any time. This reservation includes, without limitation, the right to enter upon the Property for purposes of site assessments, groundwater monitoring, weed management, and associated activities. Greeley also reserves its rights to: (i) use any portion of the Property for public utilities and as ingress and egress for public use and rights of way; (ii) use, repair, install, replace, and maintain public utilities and rights-of-way on, over, or under the Property; and (iii) use any portion of the Property as a site for the application of digested biosolids.

11. TERMINATION FOR CAUSE.

a. Glover agrees to observe and perform the terms and conditions of this Lease Agreement. If Glover fails to make payment of the Annual Lease Amount, or any part thereof, or if Glover fails to observe or perform any term or condition of this Lease Agreement, then Greeley, upon written notice to Glover, may in its sole discretion terminate this Lease Agreement and re-enter and repossess the Property, with or without legal proceedings, using such force as may be necessary, and remove any property belonging to Glover without prejudice to any claim for rent or for the breach of covenants hereof. Glover agrees to indemnify and hold Greeley harmless from and against any costs for the removal and storage of Glover's property incurred by Greeley under the provisions of this section.

b. If Greeley determines that Glover has created a public safety hazard, then Greeley may immediately take action to secure the safe operation of the Property, including without limitation, terminating this Lease Agreement and/or removing Glover and any of Glover's equipment or livestock from the Property.

c. If Glover, after the expiration or termination of this Lease Agreement, remains in possession of the Property without a written agreement, the holding over shall be a tenancy from month-to-month at a monthly rental rate equivalent to one-twelfth of the Annual Lease Amount, payable in advance on the first day of each month. No payments of money by Glover after the expiration or termination of this Lease Agreement shall constitute a renewal of this Lease Agreement beyond December 31, 2023 in the absence of a mutual written agreement of renewal by and between Glover and Greeley.

12. INSURANCE REQUIREMENTS.

a. Glover shall purchase and maintain for the full period of this Lease Agreement, including any additional extension periods, at Glover's sole expense, insurance policies providing coverage as follows:

i. Farm liability insurance, including coverage for bodily injury, property damage, contractual liability, and broad-form property damage and owner/contractor's protective coverage, with a minimum coverage of not less than \$1,000,000.00 or as approved by the City of Greeley Risk Manager; and

ii. Workers' compensation and employers' liability insurance, if applicable, which shall cover the obligations of Glover in accordance with the provisions of the Workers' Compensation Act of Colorado, as amended.

b. Before commencement of the lease term, Glover must present all applicable insurance policies, certificates of insurance, and endorsements, along with a signed copy of this Lease Agreement, to the City of Greeley Risk Manager, and receive the Risk Manager's written approval as to the adequacy of such insurance coverage.

c. The insurance policies shall contain an endorsement naming the City of Greeley, Colorado, a municipal corporation, and its council members, officers, agents, employees, and volunteers as additional insured parties with respect to all activities Glover may perform under this Lease Agreement. Moreover, such endorsement shall include a notice provision requiring 30 days written notice to Greeley before any cancellation.

d. Only insurance companies with authority to issue policies in the State of Colorado shall provide insurance coverage under this Lease Agreement.

e. For the term of this Lease Agreement, Glover shall not cancel, materially change, or fail to renew the insurance coverage, and Glover shall notify the City of Greeley's Risk Manager of any material reduction or exhaustion of aggregate policy limits. If Glover fails to purchase or maintain the insurance coverage stated in this Lease Agreement, Greeley shall have the right to procure such insurance coverage at Glover's expense.

f. Nothing in this Section 12 shall limit the extent of Glover's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from Glover's occupancy, use, or control of the Property or Glover's performance or nonperformance under this Lease Agreement.

13. STATUS OF LESSEE. Glover shall act under this Lease Agreement as an independent contractor and not as an employee, agent, or joint venture of Greeley. Glover's operations will not be supervised by any employee or official of Greeley, nor will Glover exercise supervision over any employee or official of Greeley. Glover shall not represent that he is an employee, agent, or joint venture of Greeley. Glover shall supply all personnel, equipment, and materials at Glover's sole expense. Glover is not entitled to Workers' Compensation benefits from Greeley, and is obligated to pay federal and state income tax on money earned pursuant to this Lease Agreement.

14. MISCELLANEOUS PROVISIONS.

a. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

b. No waiver or default by Greeley of any of the terms, covenants, warranties, or conditions hereof to be performed, kept, or observed by Glover shall be construed or operate as a waiver by Greeley of any of the terms, covenants, warranties, or conditions herein contained, to be performed, kept, or observed by Glover.

c. Glover agrees that Greeley shall be under no obligation to maintain the Property in a particular condition or for a particular use, and Glover waives all claims for damages of any kind or nature, whatsoever, resulting therefrom.

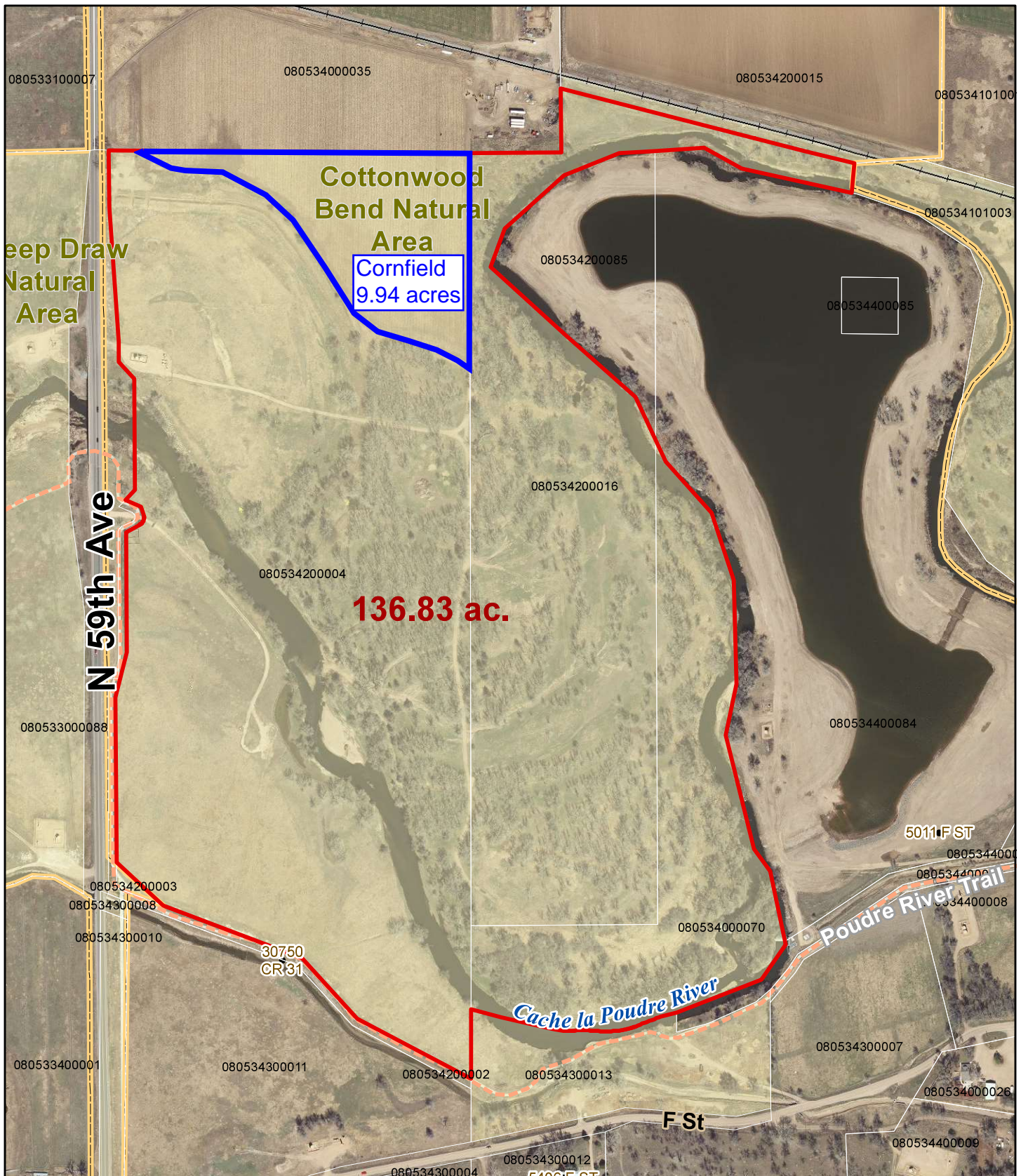
d. Article and section headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Lease Agreement.

e. The provisions of this Lease Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party of the language in question.

f. Glover shall perform all obligations under this Lease Agreement in strict compliance with all applicable laws, rules, charters, ordinances and regulations, as now exist or are later enacted or amended, of Greeley, and all county, state and federal entities having jurisdiction over the Property.

g. None of the terms, conditions, or covenants in this Lease Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than Greeley or Glover receiving services or benefits under this Lease Agreement shall be only an incidental beneficiary.

Notary Public
My commission expires: _____



**Exhibit A - Glover Farm Lease
Weld County - Outside City of Greeley Limits**

080534200016, 080534000070, 080534200004 136.83 ac.

File: CottonwoodBendArea_ExA_07Apr2017
Date: 4/12/2017
By: City of Greeley GIS

Information contained on this document remains the property of the City of Greeley. Copying any portion of this map without the written permission of the City of Greeley is strictly prohibited. This document is not intended to be used for the preparation of construction documents or surveying or navigation purposes.



0 500 1,000 Feet

Grazing Lease Agreement with Terry Glover

Property: 136 acres, former Tennyson Property

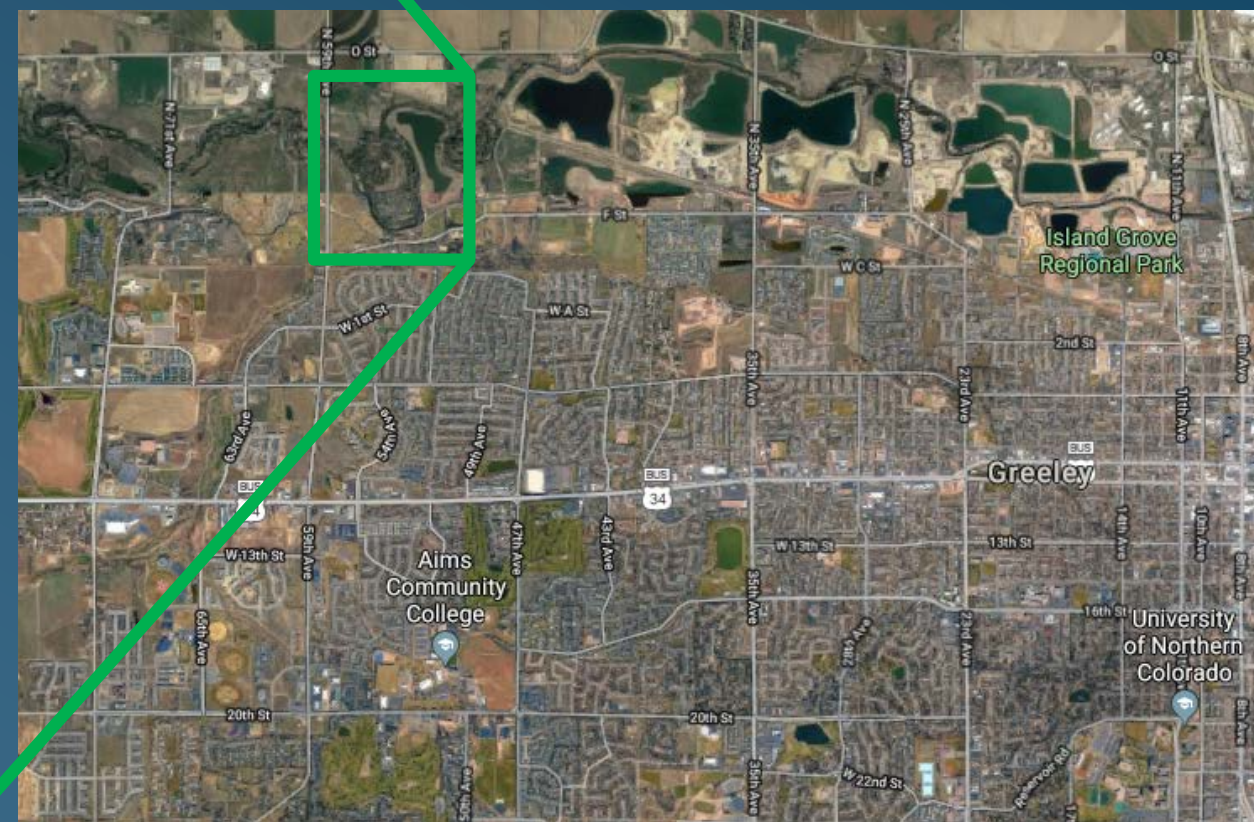
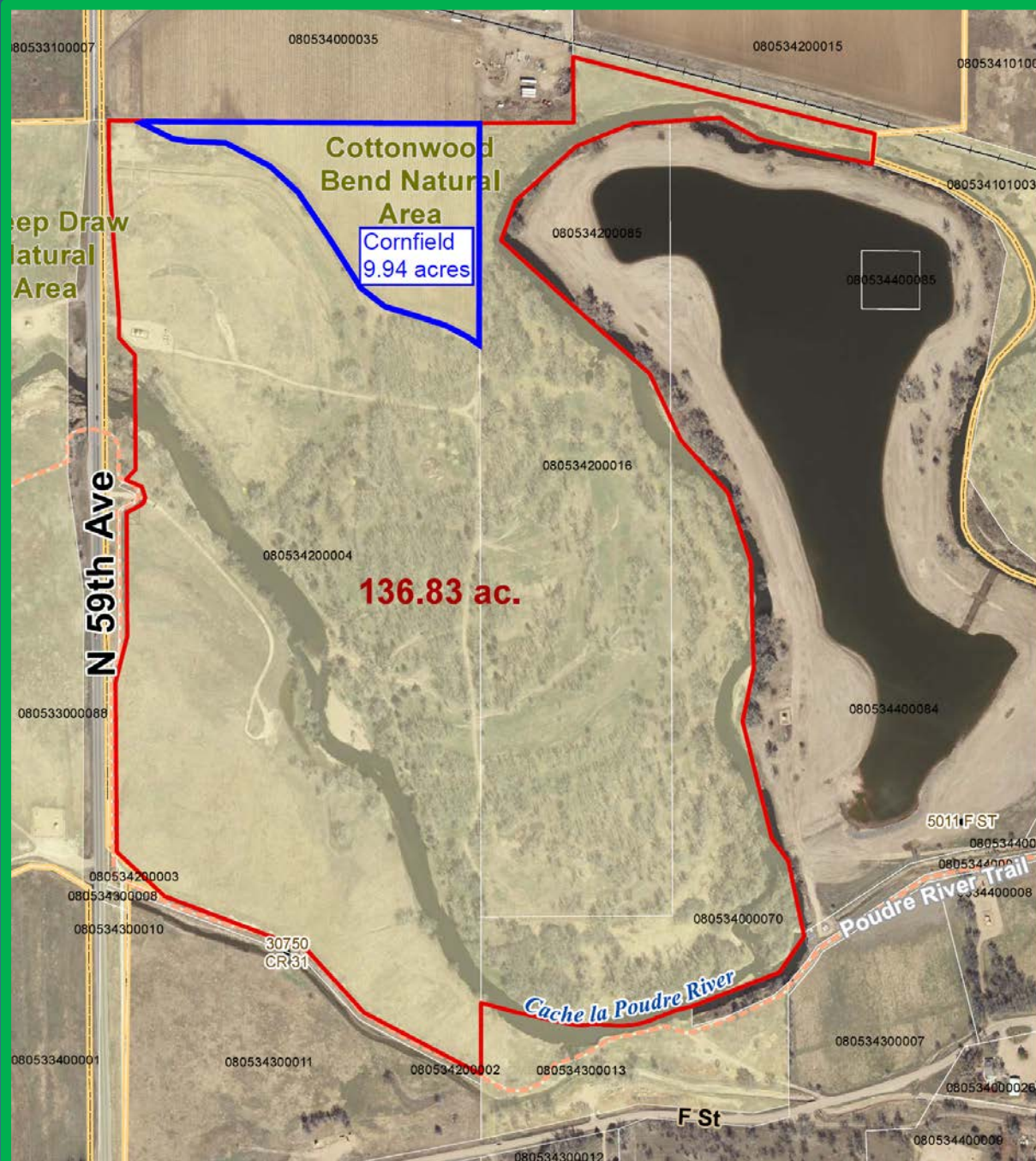
Term: Through December 31, 2019 with automatic renewal for up to four subsequent terms of one year each

Termination: Either party may terminate the lease on or before March 1 of each year

Amount: \$900 paid in two installments of \$450 each, with yearly increase in accordance with increase in CPI for each year renewed

-Lease is subordinate to Conservation Easement

-Glover is responsible for maintaining electric fencing at least 30 ft from Poudre River Trail and signage to warn Trail users of the electric fence



WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 14

TITLE: REPORT: INSTREAM FLOW
 AUGMENTATION PLAN UPDATE
 (LEGISLATIVE EFFORT)

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

In accordance with the Phase I intergovernmental agreement (approved by the Board and City Council in February 2016) and Phase II Memorandum of Understanding (approved by Board and City Council in September 2018), Greeley has been working with a number of partners through the Poudre Runs Through It FLOWS subcommittee (i.e., Fort Collins, Northern Water, Thornton, Cache la Poudre Water Users Association, Colorado Water Trust, Colorado Water Conservation Board, and Colorado Parks and Wildlife) to develop an augmentation plan to enhance instream flows in the Poudre River from the canyon mouth down to its confluence with the South Platte. The plan is intended to be a flexible tool by which parties can dedicate water at their discretion to augment flows in certain stretches of the river without adversely impacting other existing water rights. This is a presentation to update Board on the status of the project regarding the pursuit of legislation.

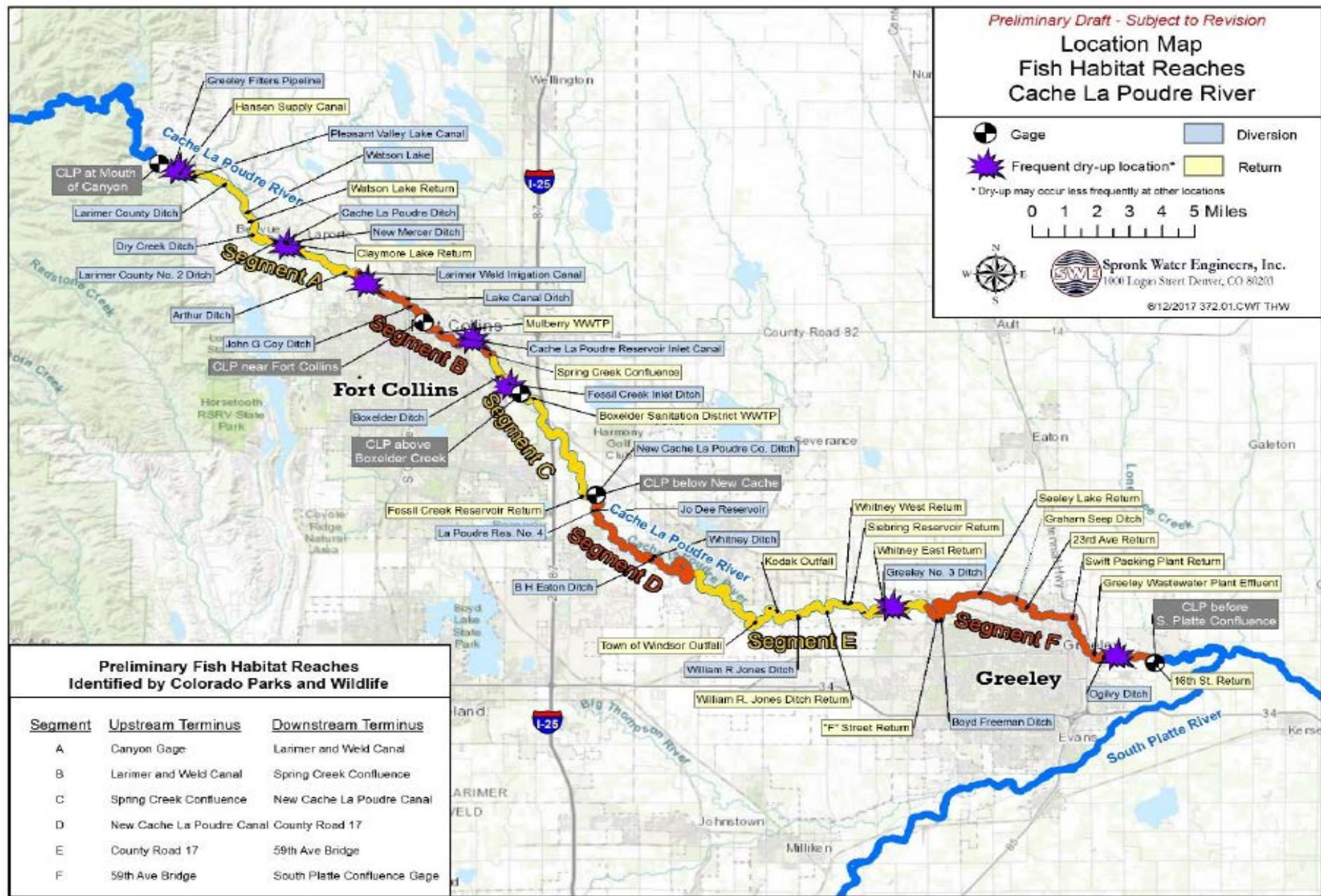


WATER AND SEWER BOARD MEETING: INSTREAM FLOW AUGMENTATION PLAN UPDATE

WEDNESDAY, MARCH 20, 2019

BACKGROUND

- *Poudre River Runs through It* goal to improve flows in the river
- Subcommittee formed with Cache la Poudre Water Users, Fort Collins, Greeley, CO Water Trust and Northern
- Novel concept of an instream flow augmentation plan where water that is decreed for augmentation use can be listed in the plan and protected in a defined reach for instream flow purposes without an additional change to instream flow use through water court
- **Plan for augmentation** means a detailed program, which may be either temporary or perpetual in duration, **to increase the supply of water available for beneficial use in a division or portion thereof by the development of new or alternate means** or points of diversion, by a pooling of water resources, by water exchange projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means. C.R.S. §37-92-103(9).



BACKGROUND

- **Phase I complete**
- **Phase II was approved at the September Board meeting:** cooperate to obtain approval from CWCB of plan, obtain leases between CWCB and “Seed” water users, develop an organizational structure, preparing and prosecuting a water court application
- Participants include Greeley, Fort Collins, Cache la Poudre Water Users, Thornton, CPW, CO Water Trust and CWCB

BACKGROUND

- Concept provided to DWR for review
- DWR sought additional clarity of definition of augmentation water to include instream flows
- Solution: pursue legislation (Note: this was not contemplated in the Phase II MOU)

Bill would:

- **Clarify authority for Water Court to approve plans for augmentation for instream flow purposes;**
- **Maintain CWCB authority over instream flows; and**
- **Affirm mechanism for changed water rights to be used in a way that benefits the environment without injury to other water rights.**

Bill would:

- **NOT injure other water rights because the Added Water would be used pursuant to its change decree and the instream flow augmentation plan decree;**
- **NOT reduce use of other water or exchange potential;**
- **NOT amend existing decrees; and**
- **NOT affect return flows from changed water rights.**

NEXT STEPS

- In process of drafting legislation
- Hired 2 lobbyists: Ed Bowditch and Jennifer Cassell
- Coordinating lobbying with Donna
- Support of Rep. Arndt
- Outreach to various organizations we think will have interest in the legislation process
- Introduce to State Affairs on 3/18
- Important to pursue this path: Regional effort to increase flows in the river, collaboration improves Greeley's relationships on both sides of I-25 and potential use as future mitigation

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 15

TITLE: ACTION: ADOPT RESOLUTION IN SUPPORT
 OF WATER SMART GRANT APPLICATION

RECOMMENDATION: ADOPT RESOLUTION

ADDITIONAL INFORMATION:

The City is applying for the 2019 WaterSMART Water & Energy Efficiency Grant that provides up to \$1.5M. These grants are awarded to larger projects that result in quantifiable and sustained water savings and support broader water reliability benefits. These projects conserve and use water more efficiently; mitigate conflict risk in areas at a high risk of future water conflict; and accomplish other benefits that contribute to water supply reliability in the western United States. Staff recommends that the Board adopt the enclosed resolution in support of this grant application.

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

RESOLUTION _____, 2019

**A RESOLUTION IN SUPPORT OF AN APPLICATION BY THE CITY OF GREELEY
WATER AND SEWER DEPARTMENT FOR FEDERAL ASSISTANCE FROM THE
UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION, WATER
AND ENERGY EFFICIENCY GRANT PROGRAM**

WHEREAS, the United States Department of Interior, through the Bureau of Reclamation, makes financial assistance available to local agencies through its Water and Energy Efficiency Grant Program, for projects anticipated to achieve quantifiable and sustained water savings; and

WHEREAS, the City of Greeley Water and Sewer Department is developing one such project which is eligible for financial assistance through the Water and Energy Efficiency Grant Program, that project being the installation of Advanced Metering Infrastructure (AMI) Meters throughout the City; and

WHEREAS, the installation of Advanced Metering Infrastructure (AMI) Meters is anticipated to effect meaningful water savings for the City through the increased accuracy and frequency of meter readings, and the improved communications and monitoring capabilities of Advanced Metering Infrastructure (AMI) Meters; and

WHEREAS, the City of Greeley will be required to provide 50 percent of the project costs as a local match if awarded financial assistance through the Water and Energy Efficiency Grant Program for this project; and

WHEREAS, the City of Greeley Water and Sewer Department desires to leverage City funds and financial assistance potentially available through the Bureau of Reclamation Water and Energy Efficiency Grant Program to support its Advanced Metering Infrastructure (AMI) Meters project, which will achieve significant water savings for the City and its citizens.

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

Section 1. The City of Greeley Water and Sewer Board hereby expresses its support for the City of Greeley Water and Sewer Department, Water Operations Division Application for Federal Assistance – Advanced Metering Infrastructure Meter Installation Project, which Application will be submitted to the United States Department of Interior, Bureau of Reclamation, for financial assistance through its Water and Energy Efficiency Grant Program.

Section 2. The City of Greeley Water and Sewer Board hereby encourages Water and Sewer Department staff to work with Bureau of Reclamation staff to meet any established deadlines or other requirements for submitting the Application described in this Resolution, and for obtaining financial assistance through the Water and Energy Efficiency Grant Program.

Section 3. The City of Greeley Water and Sewer Board further resolves to consider approval of any relevant agreements that are developed in the course of the Department's participation in the Water and Energy Efficiency Grant Program and fall within the approval authority of the Water and Sewer Board set forth in the City of Greeley City Charter, and to consider recommendation of any such relevant intergovernmental agreements that would otherwise fall within the approval authority of the City of Greeley City Council.

Section 4. The City of Greeley Water and Sewer Board further resolves to work with the City Manager via its role in the City budget-setting process to recommend that the City position itself to provide the 50 percent matching funding that will required from the City if awarded financial assistance through the Water and Energy Efficiency Grant Program.

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

ATTEST

CITY OF GREELEY
WATER AND SEWER BOARD

Roy Otto
City Manager, Secretary to the Board

Harold Evans
Chairman, Water and Sewer Board

Bureau of Reclamation WaterSMART Grant



WaterSMART Grant

Water and Energy Efficiency Grants

- \$24 Million available in 2019
- These grants will be awarded to larger projects that will result in quantifiable and sustained water savings and support broader water reliability benefits. These projects conserve and use water more efficiently; mitigate conflict risk in areas at a high risk of future water conflict; and accomplish other benefits that contribute to water supply reliability in the western United States.
 - Funding Group I - \$300,000 and completed in two years
 - **Funding Group II - \$1.5 Million and completed in three years**
- Applicant must provide 50% cost-share
- 54 out of 120 applicants received funding in 2018



WaterSMART Grant

Greeley Grant Application

- Project includes installation of 14,500 National/Badger Smart AMI (Advanced Metering Infrastructure) meters
 - Replaces half of Greeley meters 29,000 meters
- Installation planned from 2020 - 2022



WaterSMART Grant

Badger Beacon AMI Meters

- Increased accuracy from 0.5 to 0.1 gals
- Increased meter readings to every 15 minutes
 - Currently meters read once per month
 - Enhanced leak detection and elimination
- Two way communications with meters
- Online/smartphone/tablet apps for monitoring of water usage
 - Customizable dashboards for citizens and W&S staff
- Integration with existing and future billing system



WaterSMART Grant

Estimate Water Savings

- Reduce non-revenue water by 1% or 245 ac-ft/year
- Estimated Water Conservation
 - 20% of customers with new meters will reduce usage by 20%
 - Estimated savings of 491 ac-ft/year
- Improved leak detection & elimination
 - Average 10 (last 14 years) residential leaks per year with 650,000 gals per leak – Savings of 199 ac-ft/year
 - Estimated 50 minor indoor leaks of 0.5 gal/min – Savings of 166 ac-ft/year
- **Total Estimated Water Savings of 1,101 ac-ft/year**



WaterSMART Grant

Estimate Cost for 14,500 Meters


- National/Budget Beacon meter equipment - \$4.7 million
- Meter Equipment installation cost – \$2 million
- Grant Award – \$1.5 million
- Greeley Contributions - \$5.2 million or \$1.73 million/year for three years
- Raw water acquisition cost (1,101 ac-ft) - \$22 million
 - Assume \$20,000/ac-ft of raw water





THANK YOU!

Any Questions?



WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE ____

NO ENCLOSURE X

ITEM NUMBER: 16

TITLE: REPORT: CCWCD PRESENTATION BY
CENTRAL

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

CCWCD presentation by Central.

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE ____

NO ENCLOSURE X

ITEM NUMBER: 17

TITLE: REPORT: NISP PROJECT UPDATE

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

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



Northern Integrated Supply Project Update

March 14, 2019

Glade Reservoir

170,000 acre-feet

U.S. Highway 287
Realignment

Wellington

Poudre Valley Canal



Galeton Reservoir

45,600 acre-feet

Galeton
Pipeline

NISP Delivery
Pipeline

Horsetooth
Reservoir

Fort Collins

Larimer & Weld Canal

Severance

Eaton

Windsor

New Cache Canal

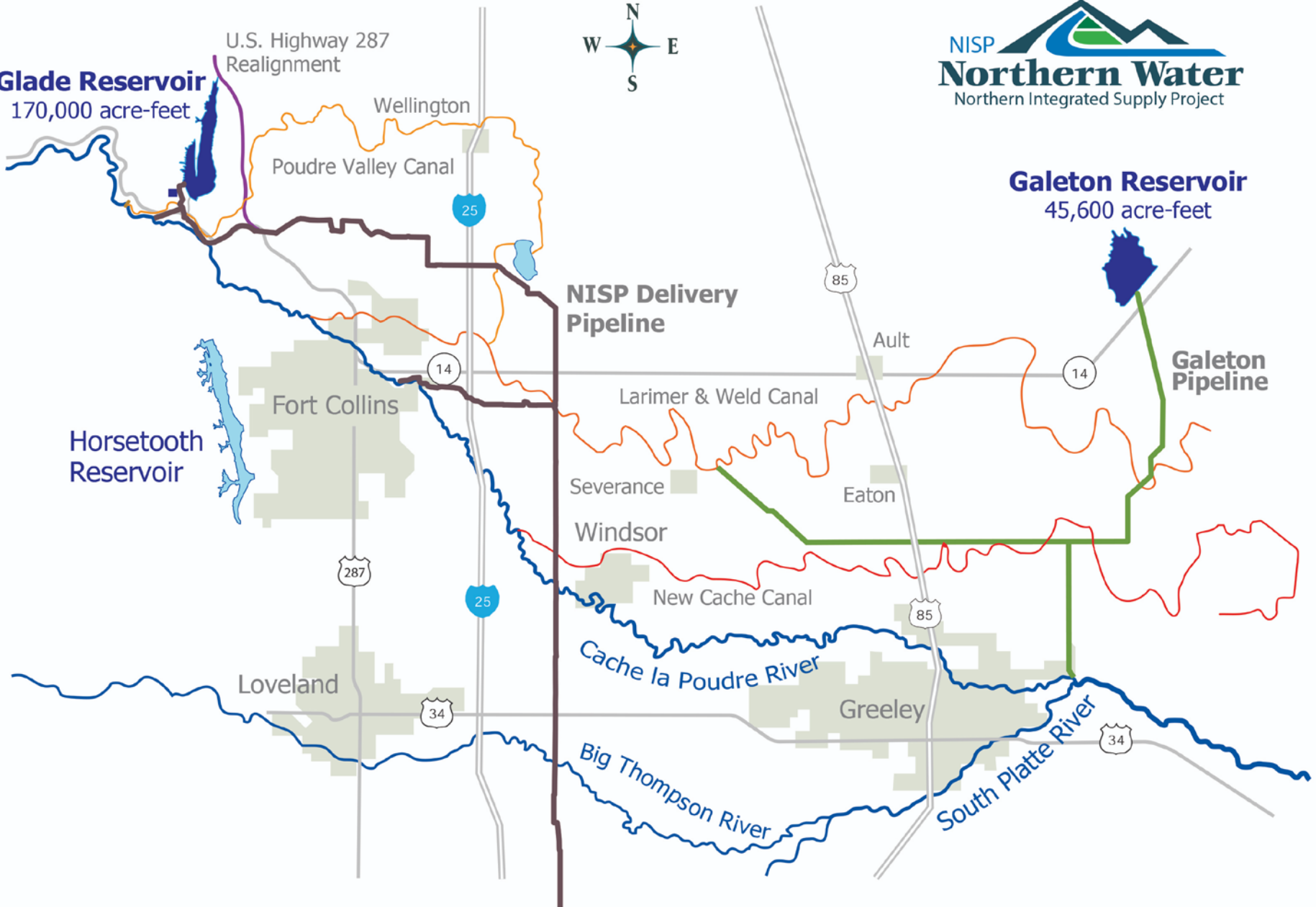
Cache la Poudre River

Loveland

Greeley

Big Thompson River

South Platte River



NISP Timeline*

- 2017 – Approval of Fish and Wildlife Mitigation and Enhancement Plan
- 2018 – Final Environmental Impact Statement released
- 2019 – Anticipated 401 Water Quality Certification Permit from the State of Colorado
- 2019 – Anticipated Record of Decision and 404 Permit from the U.S. Army Corps of Engineers
- 2019-2021 – Project design to be finalized
- 2021-2025 – Anticipated construction dates
- 2025 – First water stored in Glade Reservoir

*Source: Northern Water

401 Water Quality Certification

- State's review of NISP's water quality impacts
- Reviewed by CDPHE – Water Quality Control Division
- 401 certification required before Corps can issue Record of Decision
- 30-day public comment period; comments due Apr. 5
- State may approve, conditionally approve, or deny certification

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 18

TITLE: EXECUTIVE SESSION

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 19

TITLE: ACTION: APPROVE ACQUISITION OF
GREELEY IRRIGATION COMPANY SHARES
FROM PECKHAM DEVELOPMENT
CORPORATION

RECOMMENDATION: APPROVE ACQUISITION OF GREELEY
IRRIGATION COMPANY SHARES FROM
PECKHAM DEVELOPMENT CORPORATION

ADDITIONAL INFORMATION:

Staff recommends that the Water and Sewer Board approve the enclosed Purchase and Sale Agreement for Water Rights with Peckham Development Corporation (“Peckham”). The Agreement contemplates Greeley’s purchase of four (4) shares of stock in the Greeley Irrigation Company (“Subject Shares”). The total purchase price is \$338,300.00.

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

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

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 20

TITLE: ACTION: APPROVE ACQUISITION OF NEW
CACHE AND WINDSOR RESERVOIR SHARES
FROM WESTERN EQUIPMENT

RECOMMENDATION: APPROVE ACQUISITION

ADDITIONAL INFORMATION:

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

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

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

PURCHASE AND SALE AGREEMENT FOR WATER RIGHTS
(Western Equipment & Truck, Inc.)

Date: _____

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into by and between Western Equipment & Truck, Inc. ("Seller"), a Colorado Corporation, 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 16, Township 6 North, Range 65 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 twelve (12) shares of stock in The New Cache la Poudre Irrigating Company, four (4) shares of stock in The Cache la Poudre Reservoir Company, and four (4) shares of stock in The Windsor Reservoir and Canal Company; and

C. The Water Rights have historically been used as a combined supply to irrigate all of the Land by Seller, such that all of the Water Rights have been necessary to provide a complete irrigation water supply for the Land; and

D. 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; and

E. Seller and Buyer (collectively "Parties") acknowledge that a fundamental basis of this Agreement is that all of the Water Rights are conveyed together, because any part of the Water Rights would not be useful for irrigation of the Land if all of the Water Rights are not available for such use by Seller, and because it will be necessary to impose a restrictive covenant regarding irrigation of all of the Land at such time that the Water Rights are changed to other uses in the future;

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. Western Equipment & Truck, Inc., a Colorado Corporation.

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

all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756), which have 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 appropriation of the McClellan Seepage Ditch out of Lone Tree Ditch. The Water Rights shall not include any interest in any wells, well rights, well permits, whether tributary, nontributary, or not nontributary.

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, if (i) the Title Documents described in Section 4 reflect any discrepancy in 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) 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 in Subsection 2(c) above, then the parties will modify Exhibit A and/or Subsection 2(c) above and amend this Agreement to reflect the legal description of the Land and/or Water Rights owned by Seller, 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 New Cache la Poudre Irrigating Company, Cache la Poudre Reservoir Company, and the Windsor Reservoir and Canal 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	§5(d)	Right of First Refusal Notice	5 Days after MEC
3	§ 4a	Title Deadline	10 Days after MEC
4	§ 5b	Off-Record Matters Deadline	15 Days after MEC
5	§ 5a	Title Objection Deadline	120 Days after MEC
6	§ 5b	Off-Record Matters Objection Deadline	120 Days after MEC
7	§ 6c	Inspection Objection Deadline	120 Days after MEC
8	§ 6d	Resolution Deadline	130 Days after MEC
9	§ 8	Closing Date	135 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, six-hundred fifty thousand dollars and zero cents (\$1,650,000.00), 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 five-thousand dollars and zero cents (\$5,000.00), shall be due and 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 the Closing occurs. 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. In the event of an exercise of the right of first refusal as referenced in Subsection 5(d), the return and refund provisions of Sections 3(a), 18(b), and 19 shall nonetheless apply and inure only to the benefit of the City of Greeley, Colorado, acting by and through its Water and Sewer Board.

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 that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the City Council of the City of Greeley.

d. Buyer and Seller agree that the sale of shares in each Company comprising the Water Rights is interdependent upon the sale of shares in each other Company. In furtherance of the foregoing, this Agreement shall not be amended to change the legal description of the Water Rights to exclude shares in any Company.

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.

d. Right of First Refusal. The Parties agree that the entirety of the Water Rights shall be conveyed together. It is understood that the Windsor Reservoir and Canal Company has rights of first refusal over its shares upon the same terms as the original offer. Seller must submit this Agreement to the Windsor Reservoir and Canal Company within five (5) days of MEC according to the terms of the bylaws of those Companies. If the Windsor Reservoir and Canal Company exercises its right of first refusal and elects to purchase under the same terms and conditions as this Agreement, then this Agreement shall terminate, and the Earnest Money shall be returned to Buyer pursuant to Sections 3(a) and 19. If the rights of first refusal are waived explicitly or expire, this Agreement will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing.

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, testing reports and records maintained by the Company concerning the Water Rights, including without limitation share certificate records, delivery records and assessment records (or, in the alternative, 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, maintenance or leasing of the Property or any portion thereof.

b. Right to Inspect.

(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.

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.

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 at one-half (½) by Buyer and one-half (½) collectively by Seller. 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.

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. Buyer shall execute a Real Property Transfer Declaration as required by Colorado law.

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, that 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 obtained by Buyer 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.

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 a period of twenty (20) years after Closing ("Irrigation Water Lease"). 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 in the amount of one-hundred fifty dollars and zero cents (\$150.00) per year ("Annual Administrative Fee"). 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 or 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 or 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, 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: Western Equipment & Truck, Inc.
Attention: Craig Sparrow
2055 1st Ave.
Greeley, CO 80631
Telephone: 970-353-6682
Facsimile: 970-352-7315
Email: sales@wwetrucks.com

If to Buyer, to: City of Greeley Water and Sewer Department
Attention: Adam Jokerst, Deputy Director of Water Resources

Water & Sewer Department
1001 11th Ave, 2nd Floor
Greeley, CO 80631
Telephone: 970-350-9815
Facsimile: 970-350-9805
Email: Adam.Jokerst@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. BROKERAGE COMMISSIONS. No brokerage commissions shall be payable by Buyer for the closing of this purchase, and Buyer specifically disclaims any obligation to pay any such commission. Seller agrees to indemnify and hold Buyer harmless from and against any and all costs, expenses, claims, losses, or damages, including reasonable attorneys' fees, resulting from or arising out of any claim for brokerage commissions incurred or made through Seller.

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 their 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:

**WESTERN EQUIPMENT & TRUCK,
INC., a Colorado Corporation**

By:_____

Title:_____

Date:_____

**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**

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

ALL THAT PART OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 16, TOWNSHIP 6 NORTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, EXCEPTING THEREFROM:

- (A) PARCEL CONVEYED TO AUGUST C. BOYE BY DEED RECORDED AT RECEPTION NO. 93421, WELD COUNTY RECORDS;
- (B) PARCEL CONVEYED TO JOHN L. COZZENS BY DEED RECORDED AT RECEPTION NO. 848320, WELD COUNTY RECORDS;
- (C) PARCEL CONVEYED TO CHARLES COZZENS & SONS PARTNERSHIP BY DEED RECORDED AT RECEPTION NO. 4430058, WELD COUNTY RECORDS; AND
- (D) LOT A OF RECORDED EXEMPTION NO. 0803-16-01 REX18-0038, RECORDED AT RECEPTION NO. 4446463, WELD COUNTY RECORDS.

ALSO,

ALL THAT PART OF THE WESTERN HALF (W1/2) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 16, TOWNSHIP 6 NORTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN WHICH LIES SOUTH AND EAST OF WHAT IS COMMONLY KNOWN AS "NO. 2 DITCH" OF THE NEW CACHE LA POUDE IRRIGATION COMPANY.

ALSO,

THAT PART OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 16, TOWNSHIP 6 NORTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 16, 17 FEET EAST OF THE NORTHWEST CORNER THEREOF;

THEN SOUTH 53 DEGREES EAST 978 FEET;

THEN NORTH 600 FEET TO A POINT ON THE NORTH LINE OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 16, 795 FEET EAST OF THE NORTHWEST CORNER THEREOF;

THEN WEST ALONG SAID NORTH LINE OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 16, 778 FEET TO THE POINT OF BEGINNING.

THE PARCEL OF LAND DESCRIBED ABOVE CONTAINS A CALCULATED AREA OF 101.21 ACRES.

SELLER:

**WESTERN EQUIPMENT & TRUCK,
INC., a Colorado Corporation**

By: 

Title: PASS

Date: 3-11-2019-

**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.**

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

(See attached Irrigation Water Lease Form)

IRRIGATION WATER LEASE FORM
(Western Equipment & Truck, Inc.)

This IRRIGATION WATER LEASE ("Agreement") is entered into this ____ day of _____ 20__, by and between the CITY OF GREELEY, a Colorado home rule municipality, acting by and through its Water and Sewer Board, ("Lessor"), whose legal address is 1100 10th Street, Greeley, Colorado 80631 and WESTERN EQUIPMENT & TRUCK, INC., a Colorado Corporation, whose address is 2055 1st Ave., Greeley, CO 80631 ("Lessee"). Lessor and Lessee are also referred to collectively as the "Parties."

WHEREAS, Lessee is the owner and legal occupant of certain real property located in Section 16, Township 6 North, Range 65 West, 6th P.M., comprising approximately one-hundred one and twenty-one hundredths (101.21) acres, which property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("the Property"); and

WHEREAS, Lessor owns those certain water rights represented by twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756) (collectively the "Water Rights"), which have historically been used to irrigate the Property; and

WHEREAS, Lessee desires to lease the Water Rights from Lessor for agricultural irrigation on the Property, subject to the terms and conditions herein; and

WHEREAS, Lessor desires to lease the Water Rights to Lessee for agricultural irrigation on the Property, subject to the terms and conditions herein;

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

1. Lease of Water Rights. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Water Rights for the purpose of agricultural irrigation on the Property during the Irrigation Season, defined as the period from April 1 through October 31 of each calendar year.

2. Term of Lease. The term of this Agreement begins on _____, 2019 and expires on March 31, 2039 (the "Term"). The obligations of Lessor are made expressly subject to Section 17-4(c) of the Charter of the City of Greeley.

3. Annual Lease Amount and Administrative Fee. Lessor shall pay all assessments, charges, and other expenses due and attributable to the Water Rights (the "Annual Lease

Amount”) to the New Cache la Poudre Irrigating Company, Cache la Poudre Reservoir Company, and the Windsor Reservoir and Canal Company. Lessee shall annually reimburse Lessor in full for payment of the Annual Lease Amount. Lessee shall also pay Lessor an annual administrative fee in the amount of one-hundred and fifty dollars (\$150.00) per year (“Annual Administrative Fee”). Lessor shall provide written notice of the Annual Lease Amount and Annual Administrative Fee to Lessee, and Lessee shall pay that amount in full to Lessor within fifteen (15) days of the notice.

4. Use of Water Rights. Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as abandonment or could lead to or cause in part or in whole a reduction in the consumptive use of the Water Rights. Lessee shall ensure that the use of any lateral ditches, easements, rights of way, and entitlements used to convey or deliver any other water than the water delivered pursuant to the Water Rights shall not interfere with Lessee’s obligation to take and use the water delivered pursuant to the Water Rights to the fullest extent possible. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws, and policies of the New Cache la Poudre Irrigating Company, Cache la Poudre Reservoir Company, and the Windsor Reservoir and Canal Company. Lessee shall comply with the applicable provisions of Chapter 14.08 of the Greeley Municipal Code, and all rules and regulations of the State of Colorado pertaining to use of the Water Rights and the use of any water on the Property. Notwithstanding the notice period described in Paragraph 12, Lessee shall provide advance written notice to Lessor of at least thirty (30) days if Lessee no longer intends to irrigate any part of the irrigable area of the Property with the Water Rights.

5. Historical Use Investigation. On or before November 30 of each calendar year, Lessee shall deliver to Lessor a completed Historical Use Affidavit and Questionnaire for the preceding irrigation season, in the form attached hereto as Exhibit B. Lessee acknowledges that Lessor may file an application to change the use of the Water Rights with the Division 1 Water Court for the State of Colorado during the Term of this Agreement. Lessee shall cooperate with Lessor and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from Lessor, 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. The provisions of this Paragraph 5 shall survive the expiration or termination of this Agreement.

6. Restriction on Sublease and Assignment. Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from Lessor. Lessee shall request consent from Lessor prior to any purported assignment of this Agreement by advance written notice of at least thirty (30) days.

Such consent may be given or withheld in the sole discretion of Lessor. If Lessee conveys the Property to a third party, such conveyance shall be subject to assignment of this Agreement to such third party in compliance with this Paragraph 6, and such third party shall acknowledge full assumption of all rights and obligations under this Agreement. In the event that Lessee enters into a contract to convey the Property to a third party, Lessee shall provide a copy of this Agreement to such third party, inform them of the obligation to assume this Agreement as a condition of closing, and shall assign this Agreement to such third party.

7. No Vested Interest in Shares or Joint Venture. Lessor grants no interest in the Water Rights to 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 Lessee shall bear the entirety of any loss, cost, damages, or expense incurred through its 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. Lessor 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 Lessor liable for any failure in delivery of water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

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

10. Indemnification. Lessee agrees to exercise its rights under this Agreement at its own risk. Lessee shall indemnify and hold harmless Lessor 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 in writing and (i) sent by certified or registered mail, return receipt requested, (ii) hand-delivered at the following addresses, or (iii) sent via electronic mail. All notices to be given under this Agreement shall be deemed to have been duly given 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, 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 registered or certified mail, return receipt requested, or on the date and at the time shown on the electronic mail (email) if emailed to the email address specified below, provided

no bounce-back email is received within three (3) days. The Parties shall provide written notice to each other if the appropriate contact name, address, or email address changes.

- a. For Lessor:
Greeley Water and Sewer Department
Attn: Director of Water & Sewer
1100 10th Street, Suite 301
Greeley, Colorado 80631
wsadmin@greeleygov.com
- b. With a Copy to:
Greeley City Attorney's Office
Environmental and Water Resources Practice Group
1100 10th Street, Suite 401
Greeley, Colorado 80631
cityattorney@greeleygov.com
- c. For Lessee:
Western Equipment & Truck, Inc.
Attention: Craig Sparrow
2055 1st Ave.
Greeley, CO 80631
sales@wetrucks.com

12. Default and Termination. If Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The Lessor may declare the default by providing written notice to the Lessee. Upon receipt of this notice of default, the Lessee shall have fifteen (15) days within which to cure the default. If, in the sole discretion of Lessor, the default remains uncured after the aforementioned fifteen (15) day cure period, or after any written extension thereof mutually agreed upon by the Parties, the Lessor may declare the Agreement terminated by written notice.

- a. Notwithstanding the above, failure by Lessee to comply with the terms and conditions of Paragraph 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event Lessee commits a material breach, Lessor may choose between the following exclusive remedies: (i) immediately terminate this Agreement by written notice to Lessee and pursue any legal or equitable remedies which it may have against the Lessee for the material breach; (ii) Lessor, its employees, agents, and contractors may, for the duration of the Term, enter and remain upon the Property, cease leasing the Water Rights to Lessee, irrigate the Property with the Water Rights, and undertake any and all other activities necessary or convenient to continuing agricultural production on the Property under the same terms and conditions as contained in this Agreement, and Lessee shall be obligated to reimburse Lessor for all costs and expenses associated with this remedy as they are incurred, within fifteen (15) days of receipt of each written notice of said costs and expenses; or (iii) immediately terminate this Agreement by written notice to Lessee

and include in said notice a demand for one-hundred thousand dollars (\$100,000.00) per year remaining in the Term as of the date of the material breach, always rounding up from the date of the material breach to the nearest whole year (*e.g.* material breach on February 20, 2028, rounded up to 12 years remaining in the term; 12 x \$100,000.00 = \$1,200,000.00), whereupon Lessee shall make payment in full within sixty (60) days of receipt.

- b. As to the sum expressed in Paragraph 12(a)(iii), the Parties agree as follows: (i) this sum is intended to liquidate damages for a material breach, as that term is defined in Paragraph 12(a); (ii) this sum is a reasonable estimate of the presumed actual damages that the material breach would cause; (iii) it is extremely difficult to ascertain the amount of actual damages that would result from a material breach; (iv) this sum constitutes compensation for a material breach, not a penalty; and (v) in the event Lessor elects the remedy described in Paragraph 12(a)(iii), Lessee's timely payment of the sum expressed therein is Lessee's sole liability and entire obligation, and Lessor's sole remedy.
- c. This Agreement may otherwise be terminated for any reason by Lessor prior to the Irrigation Season by delivering written notice to Lessee on or before March 1st of each year this Agreement is in effect.
- d. The failure of either party to declare a default or material breach does not establish a precedent or course of dealing. The failure of either party to declare a default or material breach does not constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

13. Cessation of Irrigation. Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property, except as expressly allowed by the Restrictive Covenants (No Irrigation), attached hereto as Exhibit C and incorporated herein by reference, and Paragraph 14 below.

14. Revegetation. Notwithstanding any term or condition in this Agreement to the contrary, and subject to water availability in the sole discretion of Lessor, Lessee may rent from Lessor an adequate amount of irrigation water at market price to be used to establish a native grass ground cover for purposes of accomplishing revegetation on the Property pursuant to the Restrictive Covenants (Revegetation), attached hereto as Exhibit D and incorporated herein by reference.

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

16. Recovery of Costs and Fees. In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material

breach of this Agreement may recover from the defaulting or breaching party reasonable costs and attorneys' fees incurred during the course of such legal action.

17. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement shall be the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado. The Parties agree any action so commenced shall be maintained and remain exclusively in the aforementioned courts and any courts having appellate jurisdiction over them.

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

19. Integration. This Agreement and incorporated Exhibits constitute a complete integration of the understanding and agreement between the Parties with respect to the subject matter herein, and supersede all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties exist between the Parties except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by both Parties.

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

21. Recording. The Parties shall not record this Agreement or any of its exhibits, except Exhibit C (Restrictive Covenants - No Irrigation) and Exhibit D (Restrictive Covenants - Revegetation), in the real property records of any jurisdiction.

22. Force Majeure. Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent the affected Party complies with the notification and diligent effort provisions of this Paragraph 22, and that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence, and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (each, a "Force Majeure Event") (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism). Lessee's financial inability to perform, changes in cost, availability of work force, market conditions, or contract disputes will not excuse performance by Lessee under this Paragraph. Lessee will give Lessor prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Lessee will use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized,

and resume full performance under this Agreement. During the Force Majeure Event, the non-affected Party may suspend its performance obligations until such time as the affected Party resumes performance. All financial obligations of Lessor arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council of the City of Greeley.

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

LESSEE:
WESTERN EQUIPMENT & TRUCK, INC.

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 2018 by
_____ and _____.

Witness my hand and official seal.

Notary Public
My commission expires: _____

[Lessor's Signature Page Follows]

CITY OF GREELEY, a Colorado
Home Rule Municipality, Acting By and
Through its Water and Sewer Board

ATTEST

By: _____
Mayor

By: _____
City Clerk

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

LESSEE:

WESTERN EQUIPMENT & TRUCK, INC.

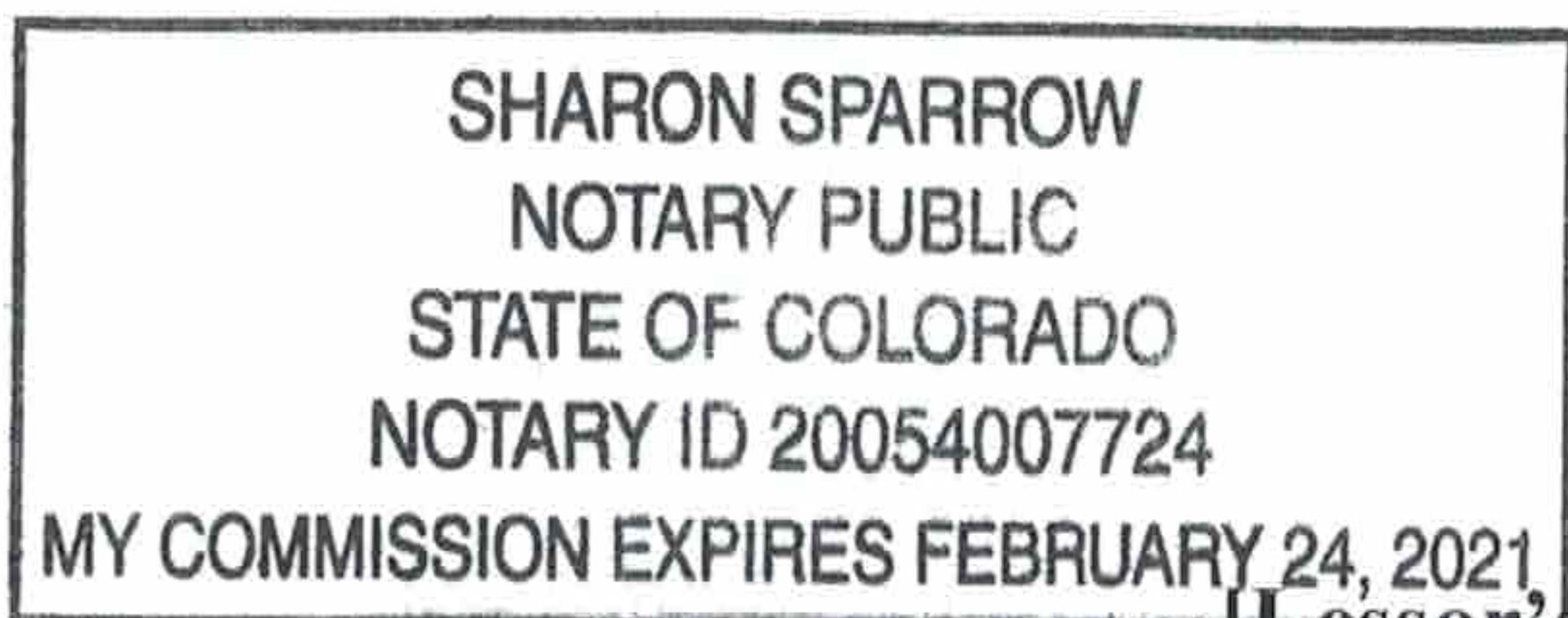
By: *Craig Sparrow*

Title: *PASS*

STATE OF COLORADO)
) ss.
COUNTY OF *Weld*)

The foregoing instrument was acknowledged before me this *11* day of *March* 201*8* by *Craig Sparrow* and _____.

Witness my hand and official seal.



Sharon Sparrow
Notary Public
My commission expires: *2/24/2021*

[Lessor's Signature Page Follows]

EXHIBIT F TO
CONTRACT TO BUY AND SELL WATER RIGHTS

(See attached Historical Use Affidavit)

AFFIDAVIT OF CRAIG R. SPARROW

STATE OF COLORADO)

)ss.

COUNTY OF WELD)

I, Craig R. Sparrow ("Affiant"), being of lawful age and first duly sworn upon oath, state and aver as follows:

1. I am the President of Western Equipment & Truck, Inc., a Colorado Corporation.

2. The address of Western Equipment & Truck, Inc. is 2055 1st Avenue, Greeley, Colorado 80631.

2. Western Equipment & Truck, Inc. has farmed a parcel of property consisting of approximately 101.21 acres further described in Exhibit A hereto (the "Land").

3. Western Equipment & Truck, Inc. owns twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756) (the "Irrigation Shares"). Western Equipment & Truck, Inc. has applied the Irrigation Shares to irrigate by [method] of irrigation, [number] acres of the Land since approximately [date] (the "___ Acres").

4. The Irrigation Shares have been delivered to the Land by [describe conveyance structures].

5. [description of whether the Irrigation Shares were sufficient to supply all of the ___ Acres].

6. [Description of crops grown]

- Dated this _____ day of _____, 2019.

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this ____ day of _____ 2019,
by _____ and _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

Exhibit A to Historical Use Affidavit

Legal Description of The Land:

ALL THAT PART OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 16, TOWNSHIP 6 NORTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, EXCEPTING THEREFROM:

(A) PARCEL CONVEYED TO AUGUST C. BOYE BY DEED RECORDED AT RECEPTION NO. 93421, WELD COUNTY RECORDS;

(B) PARCEL CONVEYED TO JOHN L. COZZENS BY DEED RECORDED AT RECEPTION NO. 848320, WELD COUNTY RECORDS;

(C) PARCEL CONVEYED TO CHARLES COZZENS & SONS PARTNERSHIP BY DEED RECORDED AT RECEPTION NO. 4430058, WELD COUNTY RECORDS;

AND

(D) LOT A OF RECORDED EXEMPTION NO. 0803-16-01 REX18-0038, RECORDED AT RECEPTION NO. 4446463, WELD COUNTY RECORDS.

ALSO,

ALL THAT PART OF THE WESTERN HALF (W1/2) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 16, TOWNSHIP 6 NORTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN WHICH LIES SOUTH AND EAST OF WHAT IS COMMONLY KNOWN AS "NO. 2 DITCH" OF THE NEW CACHE LA POUDE IRRIGATION COMPANY.

ALSO,

THAT PART OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 16, TOWNSHIP 6 NORTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 16, 17 FEET EAST OF THE NORTHWEST CORNER THEREOF;

THEN SOUTH 53 DEGREES EAST 978 FEET;

THEN NORTH 600 FEET TO A POINT ON THE NORTH LINE OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 16, 795 FEET EAST OF THE NORTHWEST CORNER THEREOF;

THEN WEST ALONG SAID NORTH LINE OF THE EASTERN HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF SAID SECTION 16, 778 FEET TO THE POINT OF BEGINNING.

THE PARCEL OF LAND DESCRIBED ABOVE CONTAINS A CALCULATED AREA OF 101.21 ACRES.

AFFIDAVIT OF CRAIG R. SPARROW

STATE OF COLORADO)

)ss.

COUNTY OF WELD)

I, Craig R. Sparrow ("Affiant"), being of lawful age and first duly sworn upon oath, state and aver as follows:

1. I am the President of Western Equipment & Truck, Inc., a Colorado Corporation.
2. The address of Western Equipment & Truck, Inc. is 2055 1st Avenue, Greeley, Colorado 80631.
2. Western Equipment & Truck, Inc. has farmed a parcel of property consisting of approximately 101.21 acres further described in Exhibit A hereto (the "Land").
3. Western Equipment & Truck, Inc. owns twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756) (the "Irrigation Shares"). Western Equipment & Truck, Inc. has applied the Irrigation Shares to irrigate by [method] of irrigation, [number] acres of the Land since approximately [date] (the " Acres").
4. The Irrigation Shares have been delivered to the Land by [describe conveyance structures].
5. [description of whether the Irrigation Shares were sufficient to supply all of the Acres].
6. [Description of crops grown]

Sharon Sparrow

Notary Public

My commission expires: 2/24/2021

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

(See attached Special Warranty Deed)

SPECIAL WARRANTY DEED
(Western Equipment & Truck, Inc.)

THIS DEED, is made this ____ day of _____ 2019, by WESTERN EQUIPMENT & TRUCK, INC., a Colorado Corporation, whose address is 2055 1st Ave., Greeley, Colorado, 80631, ("Grantor") 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 Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has 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"):

all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756), which have 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 appropriation of the McClellan Seepage Ditch out of Lone Tree Ditch. The Water Rights shall not include any interest in any wells, well rights, well permits, whether tributary, nontributary, or not nontributary.

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 Grantor, 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 Grantor, for Grantor, Grantor's successors and assigns, does covenant and agree that Grantor 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 Grantor.

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

GRANTOR:
WESTERN EQUIPMENT & TRUCK, INC.,
a Colorado Corporation

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this ____ day of _____ 2019,
by _____ and _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

SPECIAL WARRANTY DEED
(Western Equipment & Truck, Inc.)

THIS DEED, is made this 11 day of March 2019, by WESTERN EQUIPMENT & TRUCK, INC., a Colorado Corporation, whose address is 2055 1st Ave., Greeley, Colorado, 80631, ("Grantor") 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 Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has 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"):

all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756), which have 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 appropriation of the McClellan Seepage Ditch out of Lone Tree Ditch. The Water Rights shall not include any interest in any wells, well rights, well permits, whether tributary, nontributary, or not nontributary.

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 Grantor, 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 Grantor, for Grantor, Grantor's successors and assigns, does covenant and agree that Grantor 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 Grantor.

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

GRANTOR:
WESTERN EQUIPMENT & TRUCK, INC.,
a Colorado Corporation

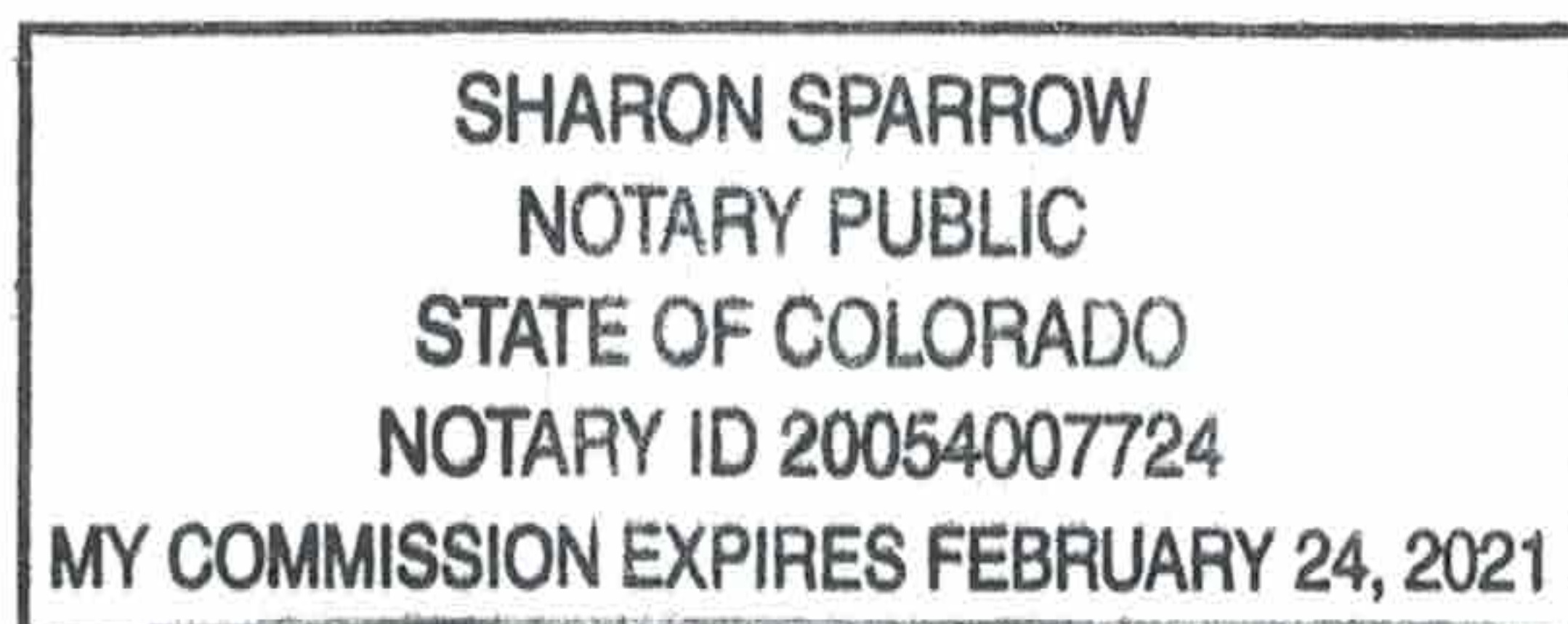
By: 
Title: PA99-


ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 11th day of March 2019, by Craig Sparrow and _____.

Witness my hand and official seal.




Notary Public
My commission expires: 2/24/2021

**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"), Western Equipment & Truck, Inc., a Colorado Corporation (the "Declarant"), agree, warrant and covenant, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarant's own behalf and on behalf of successors in interest, that upon notice from the City, Declarant shall revegetate the lands owned by Declarant 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 dated _____, between the City and Declarant, whichever date is the later, Declarant shall establish, at Declarant's 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 Declarant 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 Declarant. 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 Declarant.

The foregoing covenants of Declarant shall burden, attach to, and run with the Land and shall be binding upon Declarant's successors, assigns, and any other persons who acquire an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights, and shall inure to the benefit of the City's successors, assigns, and any other persons who acquire an ownership interest in the Water Rights. Declarant warrants and represents 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 Declarant by prepaid U.S. Mail to the Declarant at: 2055 1st Ave., Greeley, CO 80631.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the ____ day of _____, 2019.

Declarant:

By: _____

Title: _____

WESTERN EQUIPMENT & TRUCK, INC.,

a Colorado Corporation

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

My commission expires: _____

Notary Public

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"), Western Equipment & Truck, Inc., a Colorado Corporation (the "Declarant"), agree, warrant and covenant, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarant's own behalf and on behalf of successors in interest, that upon notice from the City, Declarant shall revegetate the lands owned by Declarant 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 dated _____, between the City and Declarant, whichever date is the later, Declarant shall establish, at Declarant's 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 Declarant 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 Declarant. 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 Declarant.

The foregoing covenants of Declarant shall burden, attach to, and run with the Land and shall be binding upon Declarant's successors, assigns, and any other persons who acquire an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights, and shall inure to the benefit of the City's successors, assigns, and any other persons who acquire an ownership interest in the Water Rights. Declarant warrants and represents 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 Declarant by prepaid U.S. Mail to the Declarant at: 2055 1st Ave., Greeley, CO 80631.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the 11 day of MARCH, 2019.

Declarant:

By: 

Title: PRES-

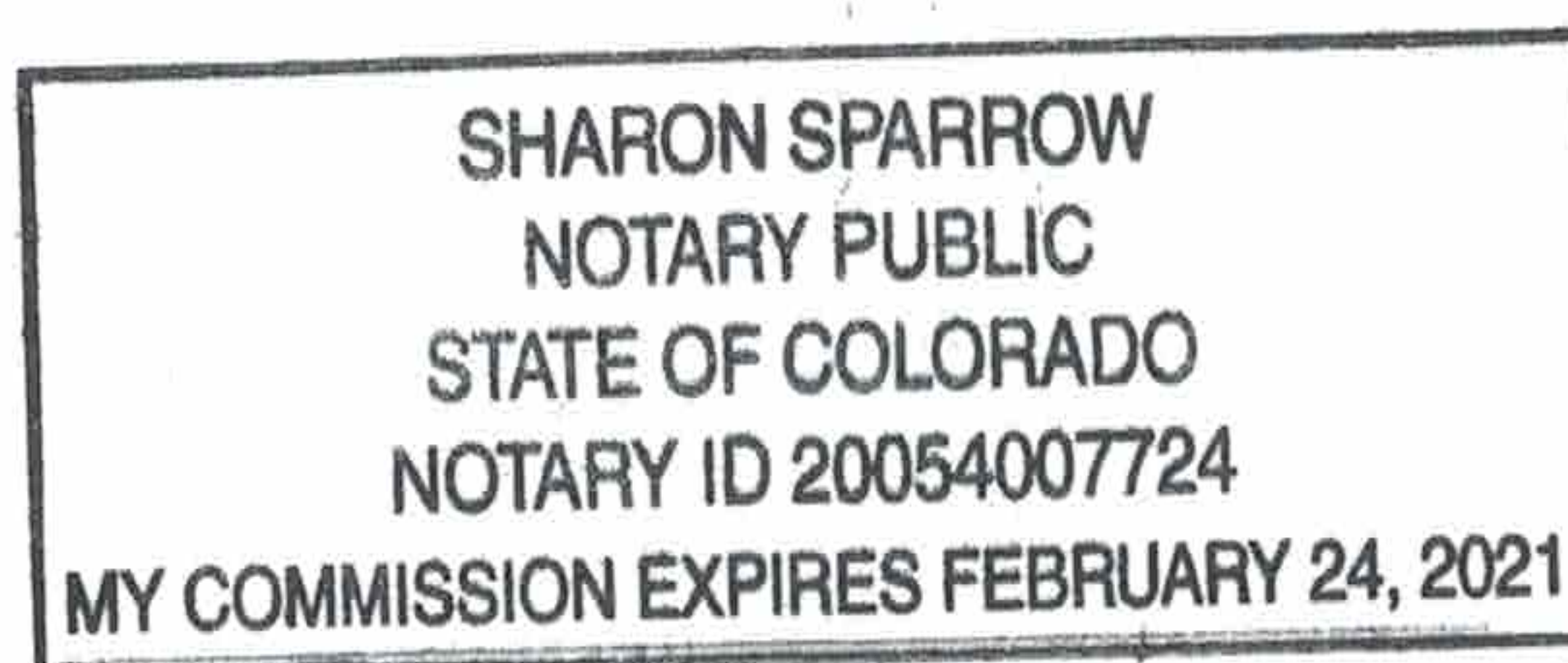
WESTERN EQUIPMENT & TRUCK, INC.,

a Colorado Corporation

Subscribed under oath before me on March 11, 2019, by Craig Sparrow and _____.

My commission expires: 2/24/2021


Notary Public



**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”), Western Equipment & Truck, Inc., a Colorado Corporation (the “Declarant”), agrees, warrants, and covenants, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarant’s own behalf and on behalf of successors in interest, that upon notice from the City, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit B attached hereto and made a part hereof (the “Land”).

Upon receipt of one hundred and eighty (180) days prior written notice from the City, thereafter Declarant shall not irrigate or make other uses of water on the Land. This prohibition explicitly includes irrigating the Land with water yielded: (i) from water rights in and to the McClellan Seepage Ditch out of Lone Tree Ditch; (ii) from well Permit No. 14513-R-R and any other well permit issued pursuant to the Elizabeth Cozzens Estate Well adjudication in case CA-11217; (iii) from WDID well number 0107834; and (iv) well permit Nos. 183699 and 247586. These covenants shall not prohibit Declarant 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; or (iv) subject to the provisions of clause two of the preceding sentence, with water which is not tributary to the South Platte River or any of its tributaries. Unless so irrigated, Declarant agrees the Land subject to these covenants shall not be planted with any crops. Subject to the foregoing exceptions, Declarant further covenants and agrees 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 Declarant.

The foregoing covenants of Declarant shall burden, attach to, and run with the Land and shall be binding upon Declarant’s successors, assigns and any other persons who acquire an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights and shall inure to the benefit of the City’s successors, assigns, and any other persons who acquire an ownership interest in the Water Rights. Declarant warrants 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 Declarant by prepaid U.S. Mail to the Declarant at: 2055 1st Ave., Greeley, CO 80631.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the ____ day of _____, 2019.

Declarant:

By: _____

Title: _____

WESTERN EQUIPMENT & TRUCK, INC.,

a Colorado Corporation

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

My commission expires: _____

Notary Public

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"), Western Equipment & Truck, Inc., a Colorado Corporation (the "Declarant"), agrees, warrants, and covenants, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarant's own behalf and on behalf of successors in interest, that upon notice from the City, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit B attached hereto and made a part hereof (the "Land").

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of these covenants may not be terminated, modified, or amended without prior written consent of the City or its successor in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: 2055 1st Ave., Greeley, CO 80631.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the 11 day of March, 2019.

Declarant:

By: 

Title: PRES

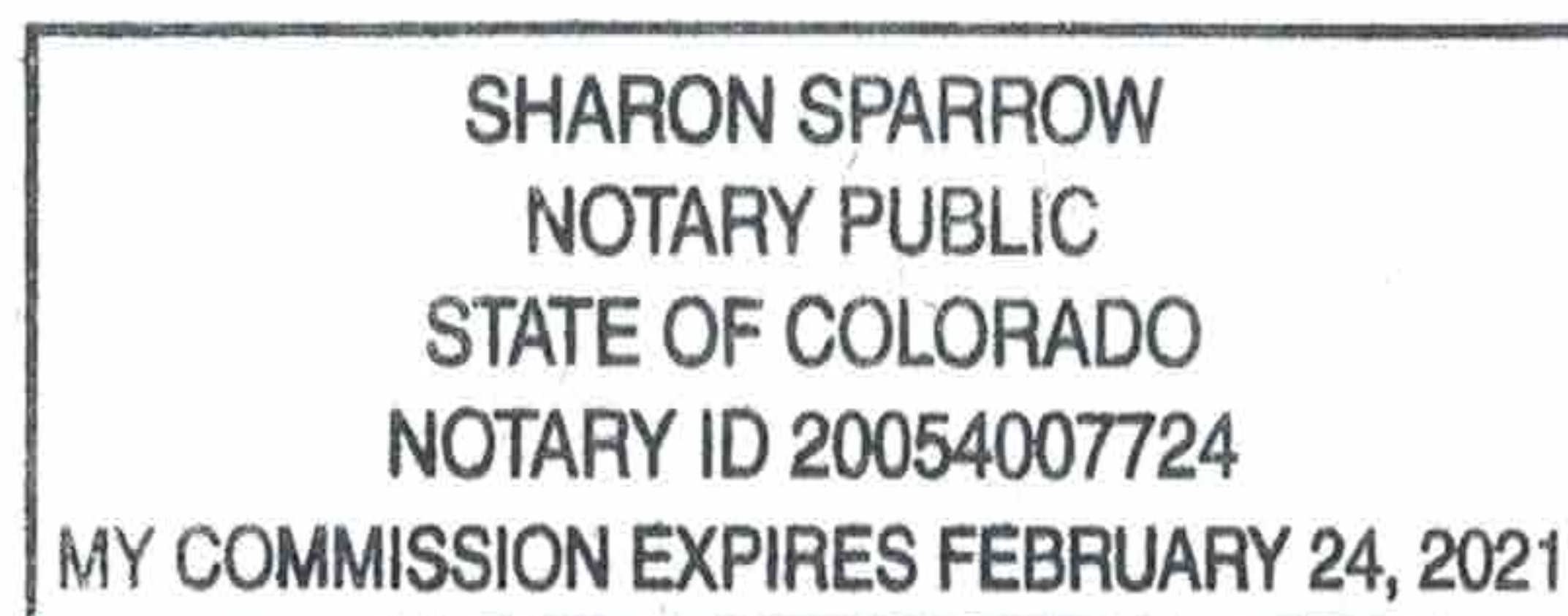
WESTERN EQUIPMENT & TRUCK, INC.,

a Colorado Corporation

Subscribed under oath before me on March 11, 2019, by Craig Sparrow and _____.

My commission expires: 2/24/2021


Notary Public



WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 21

TITLE: LEGAL REPORT

POSSIBLE ACTION: STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE X

NO ENCLOSURE

ITEM NUMBER: 22

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

See attached memo.



Water & Sewer Department

MEMORANUM

TO: Water & Sewer Board

SUBJECT: Directors Report – March 20, 2019 Water & Sewer Board Meeting

FROM: Sean Chambers, W&S Dept. Director

DATE: March 15, 2019

March 20, 2019 Water & Sewer Board Meeting Directors Report:

The following items summarize the Directors report. The report is in writing this month, as I had scheduled vacation with my family during their spring break in advance of becoming W&S Director. If you have any questions on the summary information provided herein, please contact me directly for follow-up.

1. Commercial & Multi-family Raw Water Dedication Policy Review & Revisions
 - a. Staff continues to communicate the proposed commercial and multi-family raw water requirements revisions to potential stakeholders. Staff ran a January 29th workshop for the building and commercial development community, reviewed all aspects of the proposed changes, answered questions and shared the implementation process and timeline.
 - b. The proposed policy and analysis was presented to Greeley City Council on the 12th of March work session. W&S staff shared the importance in moving towards a more precise raw water dedication policy and associated process.
 - c. Both groups were engaged in working through examples, both asked clarifying questions, and both were supportive of the concept of matching raw water requirements to the expected water usage of a new commercial and multi-family development.
2. Colorado River articles attached hereto for your information
 - a. Lawsuits from environmental advocates targeting urban Front Range water needs
 - b. Colorado River Drought Contingency Plan (DCP) update
3. Engineering and Wastewater Treatment staff and I will be presenting the Wastewater Facilities Long-range Master Plan to City Council at their Tues. March 26th Work session
4. Tour of Leprino Foods cheese production plant with City of Greeley and NCWCD Board
 - a. Thursday April 11th – Thank you for RSVPs
5. Deputy Director of Water & Wastewater Operations scheduled for early April 2019
6. April 17, 2019 Water & Sewer Board Meeting
 - a. April Water Supply Update and Declaration Concerning Water Year
 - b. Quarterly Update on MSWSP and Refined Alternatives Analysis
 - c. Preliminary 2020 Budget Presentation

- d. Annual Master Plan Review and Update
 - e. Approve and Recommend to City Council Resolution Regarding Watering Restrictions for Inside the City Single-Family Residential Customers on Water Budget Rates
7. Regional Collaboration Opportunity Investigation with NoCO Water Providers:
- a. Meetings with Windsor, Evans, Loveland, Ft. Collins, ELCO, North Weld, and Ft. Collins-Loveland Water District.
 - b. Looking for aligned interests and opportunities to work on common issues.
 - i. Tour of Bellvue WTP with Windsor staff and Town Board on April 26th
 - 1. Windsor is considering future treatment facility options, including a potential for partnership with Greely
 - ii. Coordination with Evans on Ashcroft Draw IGA Revisions for Cobblestone
 - iii. Development of Interconnect and wholesale water delivery IGA with ELCO and North Weld, and discussions on interconnects with Ft. Collins Utilities.
 - iv. Alignment and planning with large municipal providers and NCWCD on regional water quality sampling, coordination of sampling plan via JFA with Alignment around regional water wise education and drought response
 - v. Alignment around advocating to NCWCD with a common voice on important Drought Contingency Planning issues and related impacts to CBT
8. Greeley County Club conversations on extension of non-potable water system and opportunities to transition potable demands to non-potable over time. The positive evolution of snowpack and local moisture have relieved pressure on the club and we are planning to consider how this type of arrangement might come together in some future period.
9. Save the Date: Summer Water & Sewer Board – City Council Water Tour: August 23, 2019

Warring California Water Agencies Are Last Piece Of The Colorado River Drought Plan

BY THE ASSOCIATED PRESS MAR 12, 2019



Pipes extend into Lake Mead well above the high water mark near Boulder City, Nevada, March 23, 2012.

Julie Jacobson/AP

A major Southern California water agency is trying to push the state through a final hurdle in joining a larger plan to preserve a key river in the U.S. West that serves 40 million people.

Most of the seven states that get water from the Colorado River have signed off on plans to keep the waterway from crashing amid a prolonged drought, climate change and increased demands. But California and Arizona have not, **missing deadlines from the federal government.**

Arizona has some work to do but **nothing major holding it back**. California, however, has two powerful water agencies fighting over how to get the drought contingency plan approved before U.S. officials possibly impose their own rules for water going to California, Arizona and Nevada.

The Metropolitan Water District is positioning itself to shoulder California's entire water contribution, with its board voting Tuesday on a proposal to essentially write out of the drought plan another agency that gets more Colorado River water than anyone else.

That agency, the Imperial Irrigation District, has said it won't approve the plan unless the federal government agrees to **commit \$200 million to address the Salton Sea**, a massive, briny lake southeast of Los Angeles that has become an environmental and health hazard in the Imperial and Coachella valleys.

The Metropolitan Water District would have to provide what could be nearly 2 million acre-feet of water between 2020 and 2026. An acre-foot serves about one to two average households a year.

That water would be stored behind Lake Mead on the Arizona-Nevada line to keep the key reservoir from dropping to drastically low levels. Water is delivered through Lake Mead to Arizona, California and Nevada.

"The more we delay, the harder it is to hold that deal together," Metropolitan general manager Jeff Kightlinger said.

California isn't required to contribute water under the drought plan unless Lake Mead drops to 1,045 feet, which might not ever happen. But if it does, the Imperial Irrigation District said the public would likely demand that it contribute as the agency with the largest and oldest rights to Colorado River water.

"The way to arrive at a resilient and durable drought contingency plan is for the parties to work through the Salton Sea issue, not around it," Imperial general manager Henry Martinez told a Metropolitan Water District committee Monday. "Our two agencies have shown that we can do good things for the river and each other when we take the long view, and that capacity to see past the moment is what's urgently needed now."

The U.S. Bureau of Reclamation has given governors or their representatives in the seven states until March 19 to recommend the next steps after California and Arizona failed to meet its deadlines.

Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming wrote to the Colorado River Board of California over the weekend, urging California to unite with them in seeking authorization from Congress for the drought plans. Without it, the states won't be able to implement the

plans, Mexico won't contribute water and the federal government will step in and decide what to do, the states said.

The states and the Bureau of Reclamation said they support Imperial's call for federal funding for the Salton Sea.

Imperial can work on its own timeline for the salty lake because the drought plan isn't expected to negatively affect it, Reclamation Commissioner Brenda Burman said. The irrigation district can sign on now or join in the future, she said.

[Water](#) [Drought](#) [Colorado River](#) [U.S. Bureau of Reclamation](#) [California](#)

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BY BENTE BIRKELAND

What do you wonder about Colorado that

0/140

Your contact info

We'll be in touch if we look into your question.

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Pair of lawsuits challenges need for more Colorado River water

By **Lindsay Fendt, Aspen Journalism** March 9, 2019



PHOTO: BRENT GARDNER-SMITH/ASPEN JOURNALISM

The dam that forms the Windy Gap Reservoir, which sits across the main stem of the upper Colorado River, near Granby.

DENVER – Two lawsuits making their way through the federal court system are challenging two significant water projects in Colorado designed to divert more water from the Colorado, Fraser and Williams Fork river basins in Grand County.

The projects — Northern Colorado Water Conservancy District’s Windy Gap Firming project and Denver Water’s Moffat Collection System Project — would provide a combined firm yield of 48,000 acre-feet of water for the sprawling Front Range.

But environmental groups say government agencies violated the law in the environmental permitting processes of both projects.

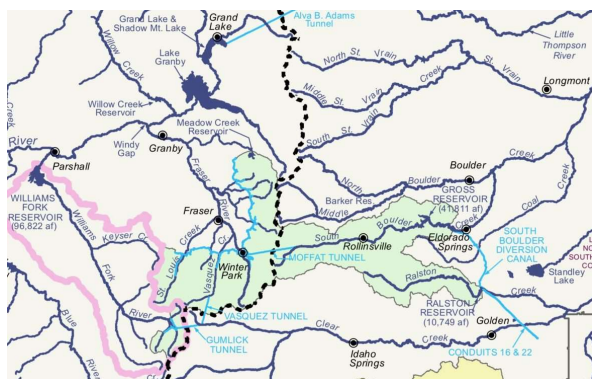
“Our biggest claim is that [the agencies] claim they looked at reasonable alternatives [to the projects],” said Gary Wockner, the director of Save the Colorado, the lead plaintiff on both cases. “But they didn’t look at conservation or efficiency. Water providers are trying to go to big water projects first and not the cheaper option of conservation.”

Both Northern and Denver Water say they factored in conservation efforts when they calculated water demand and that even aggressive conservation efforts won't be enough to meet water demand in the future.

"There are only a few answers for water supply in the future and Windy Gap Firing is one of those options," said Brad Wind, the general manager of Northern Water. "Without that project, I can't fathom where we will end up."

But some water experts say that the state's use of population growth as one of the major drivers of water demand was flawed.

"As population goes up, water demand continues to go down and it's been that way for decades," said Mark Squillace, a water law expert at the University of Colorado Law School.



Source: Denver Water

A detail of a map from Denver Water that shows the headwaters of the Fraser, Williams Fork and Colorado rivers, and associated tunnels, as well as the location of Gross Reservoir.

Decoupled demand

The phenomenon of increasing populations with declining water use is known as "decoupling," and it has been happening in nearly every part of Colorado since the 1990s.

Higher efficiency appliances, utility-driven conservation programs and greater citizen awareness of water shortages have all driven the change.

But water managers say the state's growing urban areas are reaching the point of "demand hardening," where the additional water that can be conserved will not outweigh the amount needed in the future.

"We have been hearing those kind of stories for a long time and it never happens," Squillace said. "There are a lot of things that we could still do on the conservation end that would be a lot cheaper [than new infrastructure] and a lot more consistent with the environment that we live in."

While they differ, the pair of lawsuits being spearheaded by Save the Colorado could both hinge on demand and conservation estimates, and the assumption that additional conservation won't be sufficient in the future.

Both lawsuits were filed in federal district court and are now awaiting action by a judge to move forward.

The Windy Gap Firing case was filed in October of 2017 against the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers.

The Moffat Collection System case was filed in December against the Army Corps, the U.S. Interior Department and the U.S. Fish and Wildlife Service.



An aerial view of Windy Gap Reservoir, near Granby. The reservoir is on the main stem of the Colorado River, below where the Fraser River flows into the Colorado. Water from Windy Gap is pumped up to Lake Granby and Grand Lake, and then sent to the northern Front Range through the Adams Tunnel.

The projects

Both the Windy Gap and Moffat projects were conceived decades ago to address projected water shortages on Colorado's Front Range and to add resilience to both Northern and Denver Water's supplies.

Now estimated to cost about \$600 million, the Windy Gap project will include a new 90,000 acre-foot reservoir in western Larimer county called Chimney Hollow Reservoir.

The reservoir is designed to store water from the Colorado and Fraser rivers transported from the Western Slope through the existing infrastructure of the Colorado-Big Thompson project.

Windy Gap Reservoir, built in 1985, is created by a low river-wide dam across the main stem of the Colorado River, just downstream from where the Fraser River flows in.

The reservoir is relatively small, holding 445-acre feet, but it's well situated to gather water from the Fraser, pump it up to Lake Granby and Grand Lake, and then send it through the Adams Tunnel under the Continental Divide.

With the Moffat project, Denver Water plans to spend an estimated \$464 million in order to expand Gross Reservoir in Boulder County, by raising the height of the dam by 131 feet, in order to store an additional 77,000 acre-feet of water.

Gross Reservoir is a part of the utility's existing northern collection system and is filled with water from the headwaters of the Fraser and Williams Fork river basins. The water is moved through a pipeline in the Moffat Tunnel, which runs east through the mountains from the base of the Winter Park ski area.



Brent Gardner-Smith/Aspen Journalism

The upper South Platte River, above its confluence with the North Fork of the South Platte, and the location of the proposed Two Forks dam and reservoir.

The fork not taken

The plans to expand Gross Reservoir started in 1990 after the EPA rejected Denver Water's plan to build Two Forks Reservoir on the South Platte River.

The EPA's rejection of Two Forks signaled the end of an era of large dams and forced groups planning large water infrastructure projects to give more consideration to the environmental impacts of their plans.

Following this rebuke, Denver Water turned to the environmental groups that had opposed their project and solicited advice.

Throughout the 1990s, the utility implemented water conservation and recycling programs and started making plans to expand an existing reservoir instead of building a new dam.

"We embarked on the path that the environmental groups suggested. We implemented a conservation program and reduced our demands," said Jim Lochhead, the CEO and manager of Denver Water. "But you can't get to zero. We continue to be committed to conservation, but at the end of the day we still need more water."

In partnership with environmental groups like Western Resource Advocates and Trout Unlimited, Denver Water has agreed to spend \$20 million on environmental improvements in watersheds on the Western Slope as part of the Gross Reservoir expansion.

Denver Water has also agreed to a monitoring program that will require them to mitigate any unforeseen environmental problems caused by the project, a compromise between environmental groups and the largest water utility in the state.

"In some sense this project was the development of an alternative from a number of groups," said Bart Miller, the director of the Healthy Rivers Program at Western Resource Advocates. "In some respect you are putting this in context next to what could happen or could have happened."

Concerned with having their own projects fail, as Two Forks did, other water managers emulated Denver Water's strategy.

When Northern Water started planning for the Windy Gap Firming project it also reached out to environmental groups, and ended up committing \$23 million to mitigate problems caused by past projects and to make other improvements in the upper Colorado River watershed.

Even though there will be impacts from taking more water from the river, Northern Water says that these "environmental enhancements" will leave the river better off than it would be without the project.

And environmental groups working on the project agree.

"There is a lot of damage on the river that will continue to go on without an intervention," said Mely Whiting, legal counsel for Trout Unlimited. "This is probably the best shot."



Photo: Courtesy Denver Water

Gross Reservoir in the mountains to the southwest of Boulder. Denver Water hopes to increase the height of the dam 131 feet, to a new height of 471 feet, to store three times as much water, which it says will help it meet increasing demands and to better weather severe droughts.

The lawsuits

While some environmental groups have seen compromise as the best step forward, Save the Colorado and the other plaintiffs in the two lawsuits take a harder stance.

Save the Colorado, in particular, is against any new dams or diversions.

“The river has already been drained enough,” Wockner said. “The mitigation, in our mind, is not consequential.”

Colorado and the six other states that use Colorado River water are now negotiating a plan to better manage Lake Powell and Lake Mead in response to drought and aridification.

Last week, an engineer from Northern Water told the city council of Loveland that it may have to take a ten percent cut in the water it draws from the headwaters of the Colorado River, sending the water instead to Lake Powell, where water is held before being moved through the Grand Canyon and into Lake Mead for use in California, Arizona and Nevada.

And Northern’s statement did not go unnoticed by the plaintiffs in the Windy Gap and Moffat lawsuits.

“The old guard in water have the default setting that we need to build more reservoirs and we need to find more ways to bring water from the western slope,” said Kevin Lynch, the lawyer representing the environmental groups in the Windy Gap FIRMING case. “The argument my clients are hoping to make with this case is that that may have made sense in the past but it doesn’t now. We are definitely trying to buck the status quo and change the historical way of doing things.”

Lynch and his team are arguing that the Bureau of Reclamation and the Army Corp of Engineers — the two government agencies being sued in the Windy Gap FIRMING case — failed to update and independently verify the water demand data used to justify the project.

To back up this allegation, the plaintiffs petitioned the court to include a statistics report in the administrative record.

The report, which looks at water use statistics in communities with stakes in Windy Gap FIRMING water, showed that their demand projections made back when the agencies conducted their environmental assessments were between 9 and 97 percent higher than the actual water use rates in those areas.

The lawyers in the Moffat Project lawsuit also found that Denver Water used old data from 2002 to project their demands future demands.

The complaint filed by the plaintiffs says that the Army Corps and the Department of the Interior — which are the two agencies being sued in the Moffat case along with the Fish and Wildlife Service — ignored more recent data that was available when they conducted their assessments.

“If they were to use today’s data they would no way be able to justify that they need the water,” said Bill Eubanks, the lawyer for the plaintiffs in the Moffat Project case. “Here we are talking about almost two decades. Two decades where we have seen the most transformative uses of water in a century.”

Both legal teams say that even if the data did reveal a demand for more water, the agencies failed to analyze the alternatives to two large infrastructure projects, including conservation.

Specifically, Wockner and Eubanks both spoke about how a “cash for grass” program — where the government pays people to dry up their lawns — was never analyzed as an alternative. Looking at similar programs in California, they say the same amount of water could be saved, but for less money than either of the two infrastructure projects.

To this claim both Northern Water and Denver Water say that additional conservation measures are already planned for the future, but that they are not enough.

“The state has done a lot of studies for need for water on the Front Range,” said Jeff Drager, Northern Water’s director of engineering and the project manager for the Windy Gap firming project. “We agree that there can be more conservation, but it won’t be enough to meet our participants needs.”



Brent Gardner-Smith/Aspen Journalism

The pipeline, at the base of the Winter Park ski area, that moves water as part of the existing Moffat Collection System Project. The portal of the railroad tunnel is behind the pipeline, in this view.

Looking forward

Due to a long backlog in the court, both lawsuits are unlikely to see their day in court any time soon. According to both lawyers, it could be months or years until the cases are decided. The court’s slow pace could impact the construction of both projects.

Citing the lawsuit, Northern Water delayed bonds to build the project back in August.

Executives at Northern say they are using the time to hammer out the last of the details of the project’s design, but that if the project is delayed it may cause costs to rise or endanger the water supplies of the project’s participants.

Denver Water is still waiting on several permits before they can begin planning construction and is less concerned about a delay. Both Lochhead and Wind say they believe that the projects will go forward once the lawsuits are resolved.

“We feel confident that our permitting processes are on solid ground,” Wind said. “I don’t think there is anyone in this organization at all that has thought this lawsuit would be effective.”

While both Northern Water and Denver Water are confident that their projects will move forward, the plaintiffs in the cases are hoping for an upset that could topple the entire water system in Colorado.

“If we win this case, using this particularly egregious example of inaccurate water demand projections, we think we can set a precedent that would force the state to look at more recent data for different types of projects,” Eubanks said.

WATER & SEWER BOARD AGENDA MARCH 20, 2019

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 23

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: