

# WATER & SEWER BOARD AGENDA

Wednesday, September 19, 2018  
2:00 p.m.

## **GREELEY CITY CENTER**

**1001 11<sup>TH</sup> 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. Victoria Runkle
2. Approval of Minutes
3. Approval of and/or Additions to Agenda
4. Action: Approve Phase II MOA (Instream Flow Augmentation Plan) and Recommend to Council
5. Action: Approve and Recommend to Council Acquisition of Easements for North Greeley Sewer Phase IIA
6. Report: Introduction of Commercial and Multi-Family Raw Water Requirements Policy
7. Legal Report
8. Report: Final Comments on NISP EIS
9. Executive Session
10. Director's Report
  - Board/Council Tour
  - Outstanding Debt Update
  - Water Education Newsletter
11. Such Other Business That May Be Brought Before The Board and Added to This Agenda by Motion of the Board



*If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Shannon Metcalf at 970-350-9818.*

**City of Greeley  
Water and Sewer Board  
Minutes of August 15, 2018  
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, August 15, 2018.

**1. Roll Call**

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Tony Miller, Manny Sisneros, Mayor Gates, Roy Otto, Vic Runkle

Water and Sewer Department staff:

Water and Sewer Director Burt Knight, Deputy Director Sean Chambers, Development Reviewer Jamie Boelstler, Chief Engineer Adam Prior, Operations Manager Bob Neal, Business Manager Erik Dial, Office Manager Shannon Metcalf and Senior Administrative Assistant Ettie Arnold

Legal Counsel:

City Attorney Doug Marek, Counsel to Water & Sewer Board Attorney Carolyn Burr, Environmental and Water Resources Attorney Dan Biwer and Environmental and Water Resources Attorney Aaron Goldman

Other Guests:

Real Estate Technician Monique Perez, Citizen Jack Snyder, and Citizen Alex Krasnec with Saunders Construction

**2. Approval of Minutes**

Vice Chairman Todd made a motion, seconded by Mr. Miller, to approve the July 18, 2018 Water and Sewer Board meeting minutes as presented. The motion carried 5-0.

**3. Approval of and/or Additions to Agenda**

There were no changes to the agenda.

**4. Action: Approve and Recommend to Council a Resolution Concerning the Acquisition of Easements for the Gold Hill Segment of the Bellvue Transmission Pipeline**

Mr. Prior presented an update on the last 5 mile segment of transmission pipeline to complete the project. He recommends Greeley will need to acquire 8 additional exclusive permanent and temporary construction easements of varying widths in order to complete the Bellvue Water Transmission Pipeline – Gold Hill Phase.

Mr. Miller made a motion, seconded by Vice Chairman Todd, to approve and Recommend to Council the Resolution Concerning the Acquisition of Easements for the Gold Hill Segment of the Bellvue Transmission Pipeline. The motion carried 5-0.

**5. Action: Approve Water Bond Resolution and Recommend to Council**

Mr. Dial presented a resolution for the Water and Sewer Board to authorize and approve the issuance of water revenue bonds, Series 2018, in an aggregate principal amount not to exceed \$45,000,000. The new debt funding will primarily be used to rehabilitate the water treatment plants and for the Milton Seaman Expansion permitting effort.

Mr. Evans asked for a summary of the amount of principal remaining on the existing debt within the water fund. Mr. Dial stated that staff would provide that information to the Board at a subsequent meeting.

Vice Chairman Todd moved, and Mr. Miller seconded, to approve Water Bond Resolution and Recommend to Council. The motion carried 5-0.

**6. Action: Approve Sewer Bond Resolution and Recommend to Council**

Mr. Dial presented a resolution for the Water and Sewer Board to authorize and approve the issuance of the first-lien sewer improvement revenue bonds, Series 2018, in an aggregate principal amount not to exceed \$12,000,000. The new debt funding will primarily be used for rehabilitation projects at the Water Pollution Control Facility and for expanding the sewer collection system in the Ashcroft Draw Basin.

Mr. Miller made a motion, seconded by Mr. Otis to approve Sewer Bond Resolution and Recommend to Council. The motion carried 5-0.

**7. Action: Approve Resolution to Modify Plant Investment Fees for Multi-Family Residential Development**

Mr. Dial is proposing a change to the calculation of multi-family plant investment fees (PIF) in response to a forthcoming increase in higher density multi-family residential developments in the City. The amendment would modify the PIF calculation for multi-

family residential to be consistent with commercial and industrial water and sewer customers by basing the PIF on the tap size rather than the number of multi-family units.

Discussion between staff and Board members ensued regarding the reasoning behind the proposed modification. The Board expressed a willingness to approve the modification but asked for additional information at a future meeting.

Vice Chairman Todd made a motion, seconded by Mr. Miller, to approve Resolution to Modify Plant Investment Fees for Multi-Family Residential Development. The motion carried 5-0.

**8. Report: Transmission Systems**

Mr. Neal provided an update on the technology being used to assess pipeline conditions and the progress of work that has been completed regarding maintenance of the transmission lines that are 16" and larger.

**9. Legal Report**

Mrs. Carolyn Burr stated there were no statements of opposition and she had no updates for the Board.

**10. Executive Session**

There were no items for Executive Session.

**11. Director's Report**

- Grand Opening of City Center – September 4<sup>th</sup>
- Burt announced his resignation as of September 10<sup>th</sup>, 2018.

**12. Such Other Business That May Be Brought Before The Board and Added to This Agenda by Motion of the Board**

Mr. Miller announced the tour for Ag Committee is hosted this Friday, 8/17/18.  
Chairman Evans updated board on the presentation he made to several entities.

Chairman Evans adjourned the meeting at 3:15 p.m.

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Harold Evans, Chairman

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Shannon Metcalf, Office Manager

# WATER & SEWER BOARD AGENDA    SEPTEMBER 19, 2018

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER: 4

TITLE: ACTION: APPROVE PHASE II MOA  
(INSTREAM FLOW AUGMENTATION PLAN)  
AND RECOMMEND TO COUNCIL

**RECOMMENDATION:      APPROVE AND RECOMMEND TO COUNCIL**

ADDITIONAL INFORMATION:

In accordance with the Phase I intergovernmental agreement approved by the Board and City Council in February 2016, 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.

The parties have completed the preliminary tasks associated with Phase I of the program, including organization of the parties, initial fiscal contributions, preliminary legal and engineering analyses, and development of a Water Court application. The enclosed agreement will govern Phase II of the program, during which the parties will seek formal approval of the plan through the Colorado Water Conservation Board and the Division 1 Water Court.

**MEMORANDUM OF AGREEMENT FOR PHASE II OF THE  
CACHE LA POUDRE RIVER INSTREAM FLOW AUGMENTATION PLAN**

This Agreement, dated this \_\_\_\_\_, is entered into by and between the following Parties listed in no particular order: the Cache la Poudre Water Users Association, a Colorado non-profit corporation; the City of Fort Collins, Colorado, a home rule municipality; the Colorado Water Trust, a Colorado non-profit organization; the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado; the City of Greeley, Colorado, a home rule municipality; the City of Thornton, Colorado, a home rule municipality; the Colorado Water Conservation Board, an agency of the State of Colorado; and the Colorado Division of Parks and Wildlife, an agency of the State of Colorado.

**RECITALS**

A. PRTI is a group of community water leaders convened by the Colorado State University's Colorado Water Institute for the purpose of exploring options to improve the Poudre River as a healthy, working river. From time-to-time the PRTI establishes informal initiative-specific committees to advance concepts or actions supported by PRTI.

B. The PRTI's FLOWS Committee is one such committee, and is comprised of members of PRTI and was tasked with exploring options to improve flows in the Poudre River, particularly downstream of the canyon mouth to the confluence of the South Platte River, at times when increased flows would improve the ecological health of the river, while ensuring that such options would not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights.

C. As part of this effort, the FLOWS Committee developed the idea of the ISF Augmentation Plan as an innovative, voluntary approach to increase and protect additional flows in portions of the Poudre River without injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights. As further described in the Draft Application, the Parties intend to accomplish this by measuring and delivering Added Water to the Poudre River at various points, having the Added Water shepherded by State water officials through designated segments to various downstream points, and to account for and have administered such deliveries of Added Water separately from other water in the river, as further described in the Draft Application. The Water Trust developed a multi-phase plan for developing the ISF Augmentation Plan.

D. The multi-phase plan may be generally summarized as follows:

1. Phase I (Development) generally concerns various initial and preliminary tasks needed to develop the ISF Augmentation Plan such that approval can subsequently be sought. Phase I tasks include: the organization of interested parties for the purposes of pursuing Phase I, various engineering, feasibility, and other analyses to support the ISF Augmentation Plan.

2. Phase II (CWCB and Water Court Approval and Formation) generally concerns the tasks needed to acquire approval of the ISF Augmentation Plan from the CWCB and from Water Court. Phase II Tasks include: creating this Phase II Agreement among the Parties; obtaining CWCB approval of the ISF Augmentation Plan; obtaining agreements/leases between the CWCB and some of the Water Users to provide Seed Water Rights for use in the ISF Augmentation Plan; establishing an organizational structure for the administration and operation of the ISF Augmentation Plan such that it can be implemented in Phase III; and preparing and prosecuting the Draft Application for the ISF Augmentation Plan in the Water Court to a final decree.
3. Phase III (Implementation) generally concerns the tasks needed to implement the ISF Augmentation Plan as approved by the CWCB and the Water Court and with the consensus of the Water Users, Water Trust, and CWCB. Phase III tasks include: accounting; communication with the Water Commissioner and the Parties on stream conditions and water releases; securing additional augmentation supplies to add to the ISF Augmentation Plan; reporting as required by the final decree; funding for operations and water acquisitions; and establishing operating procedures for the ISF Augmentation Plan.
4. To commence the ISF Augmentation Plan, Northern Water, the Association, Greeley, Fort Collins, and the Water Trust executed the Phase I MOU, which governed the development efforts for the ISF Augmentation Plan concept.
5. Phase I, and the tasks described in the Phase I MOU, are substantially complete and the original participants have agreed to proceed with Phase II on the terms and conditions described herein. Thornton, CPW, and the CWCB also wish to participate in development of the ISF Augmentation Plan and therefore, each is also a Party to the Phase II Agreement.
6. Each of the Parties and their involvement and expectations related to the development of the ISF Augmentation Plan are described in more detail below:
  - a. The Association is a Colorado non-profit association comprised of nearly all the major water users that derive their sources of supply from the Poudre River and its tributaries. One of the Association's primary purposes is to protect the water rights of its members from injury. While improving stream flows and the ecological health of the River is not among the Association's purposes, the Association recognizes that certain of its members do have such purposes, and one of the purposes of the Association is to maintain among such water users an effective spirit and means of co-operative effort for the common good. The Association believes that the ISF Augmentation Plan is likely to be a worthwhile "tool" for water users within the Poudre Basin provided it is voluntary, market-based, managed and operated locally by Poudre Basin water users, and, critically, is non-injurious to the water and property rights of other water users in the Basin.



- b. Fort Collins is located along the Poudre River below the canyon mouth and has an interest in this Agreement and its subject matter for various reasons, including: Fort Collins' various policy goals related to preserving and improving the health and natural environment of the Poudre River and its associated systems; Fort Collins' ownership of lands traversed by the Poudre River, including the majority of the floodplain in Fort Collins' city limits and growth management area; Fort Collins' role as a home rule municipality and the centrality of the Poudre River to the health, safety, welfare, and identity of the citizens of Fort Collins; and Fort Collins' ownership of and reliance upon numerous water rights in and along the Poudre River. Fort Collins has been an active participant in the PRTI, the FLOWS Committee, and the ISF Augmentation Plan since its inception and intends to actively continue in this Phase II as a Water User as discussed herein. Fort Collins also desires to include some of its water rights in the ISF Augmentation Plan in accordance with the terms of this Agreement (and any subsequent agreements regarding this Phase II and any subsequent phases) and relevant agreements between Fort Collins and the CWCB.
- c. The Water Trust is a Denver-based, statewide nonprofit whose mission is to restore stream flows to Colorado's rivers in need. To accomplish its mission, the Water Trust works with willing water users and suppliers to create voluntary, market-based solutions to those challenges, while respecting private property rights and working within the prior appropriation system. In 2013, the PRTI invited the Water Trust to present to the assembled Poudre River community options for voluntary streamflow restoration. Since then, the Water Trust has helped design, organize, and fund this locally-driven effort, and remains committed to its success.
- d. Northern Water owns and is developing several conditional water rights in the Cache la Poudre River basin, including the water rights associated with Glade Reservoir and the South Platte Water Conservation Project. Northern Water through the NISP Water Activity Enterprise is nearing completion of the permitting process for NISP. As part of the permitting approval process, NISP has committed to providing mitigation and enhancement for fish and wildlife, and improving flows in Poudre River. Northern Water supports additional efforts to improve flows and the natural environment in the Poudre River, and therefore has been a participant in the PRTI, the FLOWS Committee, and the discussions for the ISF Augmentation Plan since its inception and plans to continue in this Phase II as part of the Management Committee as discussed herein.
- e. Greeley is a home rule municipality situated just above the confluence of the Poudre and South Platte Rivers, with its primary domestic water

treatment plant located below the mouth of the Poudre Canyon. Greeley owns and operates water rights in a variety of ditch systems throughout the Poudre Basin and has been invested in the health and vitality of the Poudre River for many years, including via its involvement with the PRTI Work Group, its FLOWS Committee, and the ISF Augmentation Plan. Greeley desires to continue that investment by its participation in Phase II, and by including certain of its water rights decreed for augmentation uses in the ISF Augmentation Plan, as contemplated by this Agreement and in accordance with any future agreements for such inclusion with the CWCB.

- f. Thornton is a home rule city in the northern Denver Metropolitan Area and owns and operates an integrated municipal water supply and sewer system. Thornton has water rights in the Poudre River Basin that were changed or adjudicated for multiple uses including augmentation use within the Poudre River Basin. Thornton desires to include certain of its water rights decreed for augmentation in the ISF Augmentation Plan, as contemplated by this Agreement and in accordance with any future agreements for such inclusion with the CWCB. Thornton desires to participate in the Poudre ISF Augmentation plan because it is a voluntary, non-regulatory, market-based program that will preserve and improve streams flows in the Poudre River while at the same time protecting its water rights and property interests.
- g. CWCB is an agency of the state tasked with promoting the conservation of the waters of the state of Colorado in order to secure the greatest utilization of such waters pursuant to § 37-60-106, C.R.S. To that end, the CWCB has the exclusive authority to appropriate and acquire water rights for instream flow uses to preserve or improve the natural environment to a reasonable degree. The CWCB may also acquire by grant, purchase, donation, lease, exchange, or other contractual agreement, such water, water right, or interests in water in such amount as the board determines is appropriate for stream flows to preserve or improve the natural environment to a reasonable degree. § 37-92-102(3), C.R.S. The CWCB has a specific grant of authority from the General Assembly to file applications for augmentation plans. §37-92-102(3). The CWCB desires to participate in the planning process and in Water Court proceedings to support the local water users' efforts to increase flows in the Poudre River. CWCB will participate toward the goal of obtaining and implementing a Water Court decree for an instream flow augmentation plan that establishes up-to flow rates for the beneficial uses of preserving and improving the natural environment to a reasonable degree in certain segments of the Poudre River and facilitates the use of acquired water rights to augment the flows of the river to reach such target flows.
- h. CPW has a statutory mission to protect wildlife and aquatic resources, and maintain and protect stream flows for recreational and ecological

purposes. CPW also has a statutory obligation to consult with and provide opinions to CWCB on any proposed instream flow acquisitions. CPW has provided quantification of appropriate flows for the ISF Augmentation Plan based on scientific analyses needed to preserve and improve the natural environment to a reasonable degree. To further these statutory purposes, and to encourage and support the development of innovative ways to protect stream flows, CPW is party to this Agreement in an advisory and consulting role.

7. Recognizing that the Parties each have different purposes and motivations for being involved in the ISF Augmentation Plan, all Parties believe that it is in their mutual interest to pursue the Plan collaboratively in accordance with the terms and conditions described herein. Accordingly, the purpose of this Agreement is to set forth the Parties' general understanding, the guiding principles upon which the Parties will pursue the Plan, and in particular, how the Parties shall proceed to accomplish Phase II Tasks, including all tasks needed to acquire approval of the ISF Augmentation Plan from the CWCB and from the Water Court. A further purpose of this Agreement is to anticipate the implementation of the ISF Augmentation Plan (Phase III), including the governing/decision-making and administrative structure needed to implement the ISF Augmentation Plan once CWCB and Water Court approval has been obtained. The Parties expect to develop and execute a Phase III agreement consistent with the goals and guiding principles described herein that will more fully govern implementation of the ISF Augmentation Plan at or near the conclusion of Phase II.

**NOW THEREFORE**, in consideration of the mutual covenants made herein, the Parties hereby agree as follows:

### **AGREEMENT AND UNDERSTANDING**

1. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. **DEFINED TERMS.** The following defined terms are used throughout this Agreement, including in the foregoing recitals.

- a. **"Added Water"** means the water to be added to the Poudre River under the ISF Augmentation Plan and protected from diversion as set forth herein, which will be either Seed Water Rights or Additional Water Rights.
- b. **"Additional Water Rights"** means the water rights that are to be added to the Plan after the plan is decreed as additional sources of Added Water.
- c. **"Association"** means the Cache la Poudre Water Users Association, a Colorado non-profit corporation.

- d. “Agreement” or “Phase II Agreement” means this Agreement, including its exhibits.
- e. Common Interest Agreement means that agreement executed by the Parties, effective July 23, 2018.
- f. “CPW” means the Colorado Division of Parks and Wildlife, an agency of the State of Colorado.
- g. “CWCB” means the Colorado Water Conservation Board, an agency of the State of Colorado.
- h. “Draft Application” means Exhibit A, which is a draft of an application to be filed in Water Court pursuant to this Agreement that requests judicial approval of the ISF Augmentation Plan.
- i. “Fort Collins” means the City of Fort Collins, Colorado, a home rule municipality.
- j. “Greeley” means the City of Greeley, Colorado, a home rule municipality.
- k. “ISF Augmentation Plan” means a plan for augmentation for instream flow purposes on the Poudre River being pursued by the Parties.
- l. “Management Committee” means the committee of representatives from the Association, Fort Collins, Greeley, Northern Water, Thornton, the Water Trust, and the CWCB tasked under this Agreement to manage the ISF Augmentation Plan.
- m. “Management Committee Account” means the account for monetary resources for Phase II held by the Water Trust pursuant to this Agreement.
- n. “Member” means a Party to this Agreement with a seat on the Management Committee.
- o. “Northern Water” means the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado.
- p. “Parties” means all entities that have signed this Agreement.
- q. “Phase I MOU” means the *Agreement Regarding Phase I (Development) of a Multi-Phase Plan for an Instream Flow Augmentation Plan on the Cache La Poudre River* that Northern Water, the Association, Greeley, Fort Collins, and the Water Trust executed on January 13, 2017.

- r. “Phase II Tasks” means the tasks under Phase II of the multi-phase plan for developing the ISF Augmentation Plan identified in this Agreement and needed to acquire approval of the ISF Augmentation Plan from the CWCB and from Water Court.
- s. “Plan” means the ISF Augmentation Plan.
- t. “Poudre River” means the Cache La Poudre River.
- u. “PRTI” means the Poudre Runs Through It Study/Action Work Group.
- v. “Seed Water Rights” means the water rights that are the initial sources of Added Water for the Plan expressly identified in the Draft Application.
- w. “SWSP” means a substitute water supply plan under C.R.S. §37-92-308 or successor statutes.
- x. “Thornton” means the City of Thornton, Colorado, a home rule municipality.
- y. “Water Court” means the District Court for Water Division 1.
- z. “Water Trust” means the Colorado Water Trust, a Colorado non-profit organization.
- aa. “Water Users” means the Association, Fort Collins, Northern Water, Greeley, and Thornton.

### 3. **PURPOSE OF PHASE II AGREEMENT.**

- a. **THIS AGREEMENT.** The primary purposes of this Agreement are to set forth the Parties’ understanding and the guiding principles upon which the Parties will pursue the ISF Augmentation Plan, and to describe the nature and completion of Phase II Tasks necessary to obtain CWCB and Water Court approval. In particular, related to the completion of Phase II Tasks, this Agreement shall govern the development and prosecution of: 1) all actions necessary to achieve CWCB approval of the ISF Augmentation Plan; and 2) all actions necessary to achieve approval of the claims in the Draft Application to the Water Court seeking approval of the ISF Augmentation Plan. The Parties may also seek to operate the ISF Augmentation Plan through a temporary SWSP during Phase II. The Agreement also anticipates the implementation of the ISF Augmentation Plan once a decree is entered (Phase III), including the governing/decision-making structure and the Plan administration and accounting. Another purpose of this Agreement is to articulate certain goals and guiding principles that shall serve as the foundation for the Parties’ agreement to proceed with the Plan, and that shall inform future decision-making in both Phase II and Phase III.

- b. **GOALS AND GUIDING PRINCIPLES.** The goal of the ISF Augmentation Plan is to provide a legal mechanism whereby Added Water may be added to a defined segment or segments of the Poudre River and legally protected from diversion (including diversions by, under, or pursuant to exchanges, SWSPs, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses). More specifically, the goals of the ISF Augmentation Plan include:
- (1) to increase stream flows in the Poudre River from the canyon mouth to the South Platte River;
  - (2) to protect the Added Water in the subject segment(s) by providing for State water officials to shepherd the Added Water downstream without diversion (including diversions by, under, or pursuant to exchanges, SWSPs, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses);
  - (3) to allow for Additional Water Rights to be added to the Plan;
  - (4) to accomplish the first three goals without injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights; and
  - (5) to allow the Management Committee to consider potential adverse impacts that the Plan may have on vested water rights, decreed conditional water rights, and other exchanges, practices, and operations, which may or may not be approved by Water Court decree.

The guiding principles that Parties have agreed to include that the Plan shall be voluntary and operated locally by water users in the Poudre River basin. Any alteration to or modification of existing ditch or reservoir structures infrastructure (e.g. headgates, diversion dams) required to implement the ISF Augmentation Plan shall only take place after agreement with the owner(s) of any such structures. An additional goal is to develop the Plan with sufficient flexibility to allow water rights to be added to the Plan. The goals include for the Plan to be capable of utilizing water rights that may only be available temporarily (including: water rights associated with local alternative transfer mechanisms projects (commonly called "ATMs"); Agricultural Water Protection Water Rights under House Bill 16-1228, the rules and regulations promulgated thereunder, and subsequent statutes; and other water rights that are the subject of temporary administrative approvals) and serve as a potential revenue source for water users in the Poudre River basin willing to lease or to enter into agreements allowing for the use of their water rights in the Plan. The Parties also agree that the ISF Augmentation Plan and actions taken for it shall not be or result in violations of applicable CWCB statutes and rules and regulations.

- c. **ADDED WATER.** The Parties intend that this Paragraph 3.c identifies the initial sources of Added Water (the Seed Water Rights) which are expressly identified in the Draft Application, establishes procedures for the inclusion of Additional Water Rights in the future, and sets forth principles for the Management Committee's operation of Added Water and consideration of Additional Water Rights. The Parties do not intend that this Paragraph 3.c or any other portion of this Agreement affects in any way the standards of review that may be applied by the Water Court, the Colorado Supreme Court, the CWCB, or any administrative agency. Any Added Water included in the Plan must be capable of being measured where delivered to the stream. Any Added Water also shall not be water attributable to calculated accretions to the stream from recharge or lawn irrigation return flows.
- i. **Seed Water Rights: Initial Sources of Added Water.** The initial sources of Added Water for the Plan are the Seed Water Rights. The Parties agree that these water rights are appropriate sources of Added Water for the Plan, consistent with the principles regarding operations set forth in this Agreement. Any Party may raise concerns within the context of the Management Committee as to specific operations of the Seed Water Rights going forward.
- ii. **Additional Water Rights: Future Additional Sources of Added Water.** The Parties anticipate that Additional Water Rights will be sought for inclusion in the Plan after this Agreement is executed, after the Draft Application is filed with the Water Court or after the final decree for the Plan is entered. The Management Committee (discussed below in Paragraph 4) must approve the inclusion of any Additional Water Rights before such water rights may be included in the Plan and before any requests for their inclusion in the Plan are approved by the CWCB and filed with the Water Court or administrative agencies. The Management Committee must also consider the potential operation of such water rights in the Plan, consistent with the principles regarding operations set forth in this Agreement. A person or entity (including a Party) seeking to include any Additional Water Rights in the Plan must request approval from the Management Committee and provide the Management Committee with sufficient information regarding such water rights and their proposed operations to allow for a complete review of the request, including: information required by any decree approving the Plan regarding such Additional Water Rights; copies of the decree(s) for the Additional Water Rights; how the subject water would be measured; how the subject water would be accounted for separately from other water in the river; where the subject water would be delivered to the Poudre River; where and in what segments the subject water would be used under the Plan; whether the subject water would need to be bypassed past any intervening diversion structures and if any agreements to that effect exist; and where or how

the subject water would be reused, if applicable. The Management Committee will thereafter consider the request, including the information provided by the requesting person or entity, any additional relevant information, the final decree for the Plan, the guiding principles regarding Added Water, and any other relevant information concerning the Additional Water Rights and the potential impacts that including the Additional Water Rights could have on other water users, existing stream conditions, or river administration. The Management Committee's approval to include any Additional Water Rights in the Plan must be in writing and may include additional terms and conditions as the Management Committee may deem appropriate, including to be consistent with the goals and guiding principles set forth in this Agreement.

- iii. **Principles for Inclusion of Additional Water Rights.** The Parties agree to the following guiding principles regarding Additional Water Rights. Additional Water Rights is water that is diverted, measured, and delivered to the stream that is attributable to:

- (1) a water right that has been changed by judicial decree to be legally available for augmentation use, or has been granted administrative approval to be legally available for augmentation use;
- (2) a nontributary, transmountain, or other developed water right that is legally available for augmentation use; or
- (3) a water right decreed to be legally available for augmentation use, or administratively approved to be legally available for augmentation use.

- iv. **General Principles Regarding Added Water.** In determining how and whether Added Water can be operated in the Plan, the Management Committee shall consider whether the Added Water has historically been delivered or carried in any segment (or portion of a segment) in which the water is proposed to be protected, and in which such water has historically been delivered and carried in the stream for re-diversion, including whether it would be appropriate to protect such water in the segment (or portion of a segment) of the historical operations, the frequency and duration of such historical operations, the legal character of the water rights, and whether other water users may have relied on such water for existing operations or for appropriation of conditional or absolute water rights. The operation of Added Water Rights must be consistent with the goals and guiding principles set forth in this Agreement.

- d. **IMPLEMENTATION OF THE ISF AUGMENTATION PLAN.** Based upon the foregoing goals and guiding principles, the Parties agree to the following general description of the ISF Augmentation Plan that is to be brought before the



CWCB for approval and to be applied for with the Water Court in the form of an application substantially similar to the Draft Application, which shall guide all decision-making concerning the ISF Augmentation Plan. The ISF Augmentation Plan will create the legal framework for the inclusion of the Seed Water Rights in the Plan and a procedure for the introduction of Additional Water Rights to the Plan after the entry of the decree pursuant to C.R.S. §37-92-305(8)(c). The application shall contain provisions that provide for the State water officials to shepherd Added Water past intervening points of diversion so that it is legally protected from diversion (including diversions by, under, or pursuant to exchanges, SWSPs, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses) within stream segment(s) of the Poudre River, while assuring that, as the Added Water is shepherded downstream, there will be no injurious effect on the owners of or persons entitled to use water under vested water rights or decreed conditional water rights. The Parties understand and agree that shepherding the Added Water past existing structures in the River is likely to be necessary in certain instances and that nothing in the ISF Augmentation Plan is intended to require or compel structure owners to alter existing structures or operations to accommodate Plan operations; any such accommodations needed to add or bypass Added Water will be reached by separate agreement. Further, to promote Plan efficiency and flexibility and potential rental options for water users in the Poudre River basin, the ISF Augmentation Plan shall seek to provide a mechanism in the decree by which Additional Water Rights can be voluntarily added to the ISF Augmentation Plan for temporary or permanent use in the Plan. It is further anticipated that the ISF Augmentation Plan will provide for the reuse or successive use of Added Water downstream of the segments where the Added Water is used in the Plan. In accordance with the applicable water right decree(s) or other relevant legal authority, the owners of the Seed Water Rights and Additional Water Rights shall be entitled to reuse or successively use water attributable to those water rights downstream of the segment(s) where those water rights are used in the Plan, or to enter into agreements with other persons or entities for their reuse or successive use of such water. Decisions concerning such agreements shall be made consistent with this Agreement, sound Plan management and other Plan goals, but to the extent possible, preference shall be given to water users within the Poudre River basin who desire such water for reuse or successive use.

4. **ESTABLISHMENT OF MANAGEMENT COMMITTEE.**

- a. **MANAGEMENT COMMITTEE IN PHASE II.** To implement and manage Phase II Tasks, a Management Committee is hereby created.
  - i. **Representation.** Each Member shall designate one (1) person, and may designate one (1) alternate, to be the Party's representative on the

Management Committee. The following are the Parties' Management Committee representatives:

<u>Water User Members</u>	<u>Representative</u>	<u>Alternate</u>
Association:	Dan Brown	none
Fort Collins:	John Stokes	Susan Smolnik
Greeley:	Jennifer Petrzeka	Sean Chambers
Northern Water:	Brad Wind	_____
Thornton:	Emily Hunt	Cari Bischoff

<u>Non-Water User Members</u>	<u>Representative</u>	<u>Alternate</u>
Water Trust:	Zach Smith	Karen Wogsland
CWCB:	Linda Bassi / Chief of Stream & Lake Protection Section Kaylea White / Senior Water Resources Specialist	

Each Member shall be entitled, at its sole discretion, to change its representative and alternate on the Management Committee, provided that the Member provides prompt notice of the same to the other Members.

- ii. **Charge.** The purpose of the Management Committee is to provide oversight (including oversight of operations and Added Water), direction, and decision-making for the ISF Augmentation Plan during Phase II, and Phase III as appropriate in accordance with Paragraph 3.b. The Management Committee is charged with meeting, discussing, and conferring regarding all decisions necessary to implement and accomplish Phase II Tasks, including the filing and prosecution of the Draft Application, and reviewing proposed additional sources of Additional Water Rights pursuant to Paragraph 3.c).
- iii. **Duties.** Each representative will: (a) represent its Member on the Management Committee including, communicating the Member's perspectives and positions; and (b) communicate to its Member the work of the Management Committee and the ISF Augmentation Plan.

- iv. **Decision-making in Phase II.** Decisions of the Management Committee are to be made consistent with Plan goals and guiding principles set forth herein. The Management Committee shall operate by consensus in making Phase II decisions and prosecution of Phase II Tasks. To this end, the Members of the Management Committee shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus. Any decisions involving the use of a particular Water User's water rights may only be made with the consent of that Water User that owns the particular water right, in that Water User's sole discretion.
- v. **Water Court Application.** To implement the ISF Augmentation Plan some of the Parties will file an application in Water Court substantially in the form of the Draft Application. The CWCB shall be an applicant because the Application involves the adjudication of an augmentation plan to help preserve and improve the natural environment under the CWCB's statutory authority to use water for instream flow purposes. It is anticipated that other Parties may individually participate as a co-applicant(s) or the Management Committee may create an entity, should it deem it necessary, for this purpose and that entity may participate as a co-applicant. It is presently anticipated that the Association will be a co-applicant. All decisions concerning the prosecution of the Application shall be made in accordance with Paragraph 4.a.iv. A Water User/co-applicant in its sole discretion may withdraw as a co-applicant. , Any Party that is not a co-applicant may file a "friendly" statement of opposition to the Draft Application, and the Parties hereby consent to the submission of said "friendly" statement of opposition. In the event a Party files a statement of opposition, other than a "friendly" statement of opposition, or files documents that are contrary to the entry of the decree, such Party is automatically removed from the Management Committee, but shall continue to be subject to the Common Interest Agreement.
- vi. **Meetings.** The Management Committee will schedule monthly meetings but said meetings may occur more frequently or less frequently as the Management Committee determines to be prudent. The Management Committee shall agree on a time and place of meetings that is convenient and practical for as many Members as practicable. At the Management Committee's discretion these meetings may be in person, by telephone, or may allow participation by other means of remote access. Water Trust shall circulate a financial report pursuant to Paragraph 4.d.iii at least one week in advance of the meetings, unless otherwise agreed to by the Members. Water Trust shall take action minutes of all meetings identifying: (a) the Members present and other attendees; and (b) any and all decisions made and actions taken by the Management Committee. The draft action minutes

taken by Water Trust shall be circulated to the Management Committee one week prior to the next meeting for any comments or corrections. The Management Committee may coordinate on taking more detailed minutes, in addition to the action minutes to be taken by Water Trust. The Management Committee may collectively determine whether persons other than representatives of the Members may attend any meeting(s) no less than one week in advance of the meeting. If the Management Committee determines that persons other than representatives of the Members may attend a meeting, the meeting shall be open to such persons, and perhaps the public, and the Management Committee shall determine how, when, and if to provide notice of the time and location of the meeting.

- b. **CONSULTATION WITH CPW.** The Parties agree that CPW will be consulted to assist in the development of the ISF Augmentation Plan in the following ways:
  - i. To provide science-based recommendations regarding appropriate segments and appropriate flows for augmentation, including use of the Seed Water Rights, any administrative approval to be pursued, and Additional Water Rights to be added later;
  - ii. To review and assist in the development of the Water Court application and proceedings; and
  - iii. To attend meetings and conference calls as-needed.
- c. **MANAGEMENT COMMITTEE IN PHASE III.** The Parties presently anticipate that the Management Committee will continue into Phase III as the governing and decision-making body for the ISF Augmentation Plan, although the precise structure and make-up of the governing body shall be determined by the Parties at the conclusion of Phase II. The Parties expect, however, that the Management Committee's role will evolve in Phase III to primarily involve: (a) broad policy questions regarding the operation of the ISF Augmentation Plan; (b) fundraising and the general financial position and expenditures to implement the ISF Augmentation Plan; (c) necessary water infrastructure alterations, measurement and related issues within the Plan segment(s); (d) decisions concerning the protection and defense of the ISF Augmentation Plan; and (e) such other matters as are necessary for the oversight and operation of the ISF Augmentation Plan. The Parties further anticipate that overall operation of the ISF Augmentation Plan will be overseen by the Management Committee consistent with the goals and guiding principles set forth herein. This will include decisions regarding the protection and defense of the ISF Augmentation Plan in Water Court or in SWSP proceedings. To assure that efforts toward protection and defense of the ISF Augmentation Plan are coordinated, consistent, and not unnecessarily disruptive or costly to the Parties and to other water users, the Parties agree that the protection and defense of the Plan in Water Court and in SWSP proceedings is the right and obligation of the Management Committee, and no individual Party shall take it

upon themselves to defend the Plan in Water Court or in SWSP proceedings without the authorization to do so of the Management Committee. The foregoing notwithstanding, any Party who has contributed/dedicated water rights to the Plan or has a contractual interest in the water rights included in the Plan may participate in Water Court and in SWSP proceedings for the purpose of protecting and defending such water rights or contractual interests, and for all other purposes, but shall not independently/autonomously seek to protect or defend the ISF Augmentation Plan or Plan operations. Day-to-day operation and administration of the ISF Augmentation Plan, including communications with the Water Commissioner and other water users, and including headgate operations and accounting, are anticipated to be undertaken by staff/representative(s) of the Association at the direction of the Management Committee, which may require a separate agreement with the Association.

- d. **WATER TRUST AS PLAN AND FISCAL AGENT IN PHASE II.** Water Trust shall act as the ISF Augmentation Plan fiscal agent of the Plan during Phase II, as set forth in this Paragraph 4.d.
  - i. **Water Trust Role.** Water Trust agrees to provide the staffing, office space, and office equipment to assist in the fulfillment of Phase II Tasks and the Plan more generally, subject to Water Trust Board of Director's review and budgeting authority, and any other limitations herein. Water Trust office space and equipment remain property of the Water Trust. Water Trust Executive Director remains the supervisor of Water Trust staff and Water Trust staff remain employees solely of Water Trust. Water Trust staff will engage in fundraising to support Phase II, the Draft Application, and the Plan. Exercising its own discretion, but subject to the approval of the Management Committee, which approval shall not be unreasonably withheld, the Water Trust may pursue Additional Water Rights for use in the Plan to be brought to the Management Committee, and funds for the operation of the ISF Augmentation Plan from government and private grants, corporate funding campaigns, individual donors, and other larger fund-building campaigns. Water Trust, in coordination with the Parties, agrees to assist in the accomplishment of the Phase II goals and task set forth herein, including developing and implementing legal strategies, acquiring water, water rights, and interests in water, and hiring consultants.
  - ii. **Water Trust to Hold Monies for the Plan.** Water Trust shall establish and hold all monetary resources for Phase II Tasks, in the Management Committee Account with a financial institution that is acceptable to the Management Committee. The monetary resources for the Phase II Tasks shall not be intermingled with any other funds or monetary resources, which may be accomplished either by the use of a separate

account with a financial institution or by accounting for the monetary resources for the Phase II Tasks as being separate funds.

- iii. **Financial Reporting.** Water Trust shall provide a financial report, in writing, to the Management Committee at its meetings including the Management Committee Account balance, anticipated expenditures and withdrawals, including Water Trust reimbursements, and anticipated revenues. In addition, Water Trust shall provide to any Member any documents or other information regarding the Management Committee Account upon request.
- iv. **Debt.** With the prior approval of the Management Committee, the Water Trust may incur debt associated with the implementation of the Plan. However, no Party hereto shall be liable for any debts incurred by Water Trust under this Agreement without their written and express authorization.
- v. **Unused Funds.** If, upon termination of this Agreement pursuant to Paragraph 6, there are funds in the Management Committee Account that have not been spent, are not required to be returned to the granting entity pursuant to that grant's agreement, and are not needed to pay any outstanding obligations, the Management Committee shall confer regarding how such funds may be used or refunded.
- e. **OPERATIONAL FUNDING.** The Parties agree that, due to its unique position among the Parties, Water Trust may reimburse itself from the Management Committee Account for its time and resources spent on the Plan. Water Trust shall provide the Management Committee with an accounting of such reimbursements, in the form of detailed accounting provided to the Management Committee, which shall include, among other relevant information as may be requested by the other Parties from time to time, a specification of: (a) the costs incurred by Water Trust; (b) the hours spent by Water Trust staff on the Plan; (c) the rate(s), as may change from time to time, claimed for Water Trust staff; and (d) a description of the associated task so claimed by Water Trust.
- f. **PAYMENT FOR WATER.** It is generally intended that no compensation shall be paid for the inclusion of the Seed Water Rights in the Plan, although actual compensation shall be determined between the Water User and the CWCB on a case-by-case basis, provided that such a transaction is permissible under the charters, ordinances, rules and regulations, and other legal authorities governing such Parties. If compensation for such Seed Water Rights is required, the Management Committee will determine how to proceed. As articulated in the guiding principles, it is envisioned that this Plan will allow Additional Water Rights to be added to the Plan upon approval of the Management Committee, with the idea being that the Plan be capable of

utilizing temporary water supplies (including temporary water supplies from local ATM projects, Agricultural Water Protection Water Rights, and temporary administratively approved sources) and serve as a potential revenue source for Poudre River Basin water users willing to lease water supplies to the Plan. Accordingly, the Management Committee may consider compensating for Additional Water Rights included in the Plan. However, no Party is obligated herein to contribute to any future requested compensation.

## 5. **MONETARY RESOURCES FOR PHASE II.**

- a. **MONETARY CONTRIBUTIONS BY THE PARTIES.** The monetary resources for Phase II will include monetary contributions from some of the Parties. Except as outlined herein, nothing in this Agreement shall require any Party to contribute or obligate any funds.
  - i. **Initial Contributions.** Fort Collins hereby agrees to provide twenty thousand dollars (\$20,000) to the Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Northern Water hereby agrees to provide twenty thousand dollars (\$20,000) to Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Greeley hereby agrees to provide twenty thousand dollars (\$20,000.00) to Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Thornton hereby agrees to provide twenty thousand dollars (\$20,000.00) to the Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks. Any Party may provide additional funds to the Water Trust for the purposes of this Agreement, and in particular the Phase II Tasks, which shall be documented in writing with a copy to all Parties. The monetary contributions under this Paragraph 4.a are subject to annual appropriations and, upon making such initial contributions, the contributing Party shall have no ongoing obligations except as expressly set forth herein.
  - ii. **Subsequent Contributions.** The Parties may further contribute additional funds to Water Trust for the purposes of this Agreement. Any Party making such a contribution shall notify the other Parties of such contribution.
- b. **FUNDRAISING/MONETARY CONTRIBUTIONS BY NON-PARTIES.** The Parties intend to seek additional monetary resources for the Plan through various fundraising activities including seeking grants.
- c. **DEPOSIT.** Water Trust will deposit all monetary funds in the Management Committee Account.

- d. **NON-MONETARY CONTRIBUTIONS BY THE PARTIES.** Nothing herein shall preclude the Parties from contributing non-monetary resources to the Plan, including water, staff and consultant time, but no water right of any Party may be used or operated under the ISF Augmentation Plan without the written and express authorization of the owner of that water right.

6. **TERM, TERMINATION, WITHDRAWAL, AND ASSIGNMENT.**

- a. **TERM.** This Agreement shall remain in effect until terminated by the Parties or completion of Phase II.
- b. **TERMINATION.** This Agreement shall terminate automatically upon a determination by the Management Committee not to proceed with the ISF Augmentation Plan. This Agreement shall also terminate if the Water Users withdraw pursuant to Paragraph 6.c such that there is only one Water User remaining.
- c. **WITHDRAWAL.** Each Party, in its sole discretion, shall be entitled to withdraw from this Agreement upon written notice to the remaining Parties, but shall continue to be subject to the Common Interest Agreement
  - i. **Withdrawal by the Association, Fort Collins, Northern Water, Thornton, Greeley or CPW.** If the Association, Fort Collins, Thornton, Northern Water, Greeley or CPW withdraws from this Agreement, the following terms and conditions shall apply. Said Party shall not be entitled to reimbursement for any funds provided to Water Trust for the purposes of this Agreement pursuant to Paragraph 5.a. Said Party shall be entitled to retain any information acquired pursuant to this Agreement. Said withdrawal shall not affect said Party's rights to enforce other contracts or agreements with any of the other Parties and with respect to the Plan. Upon withdrawal, said Party shall have no further liability or obligations hereunder.
  - ii. **Withdrawal by Water Trust.** If Water Trust withdraws from this Agreement, the following terms and conditions shall apply. Water Trust shall account for any funds in the Management Committee Account. Water Trust shall then transfer those funds to an account identified by the remaining Parties for their use for the Plan to the extent that such funds are not needed to meet existing obligations. Water Trust shall be entitled to retain any information acquired pursuant to this Agreement.
  - iii. **Withdrawal by the CWCB.** If the CWCB withdraws from this Agreement, the following terms and conditions shall apply. CWCB and all co-applicants in Water Court shall cancel the ISF Decree for the ISF Augmentation Plan, or, if still pending, shall dismiss the Draft



Application. CWCB and the other Parties shall terminate this MOA and all other agreements related to the Plan.

- d. **ASSIGNMENT BY WATER TRUST.** If Water Trust assigns this Agreement under Paragraph 16, Water Trust shall account for any funds in the Management Committee Account Water Trust shall then transfer those funds to the assignee in an account identified by the remaining Parties for their use for the Plan to the extent that such funds are not needed to meet existing obligations. Water Trust shall also transfer all documents and files pertaining to the Plan, either as originals or copies, to the assignee, subject to the assignee agreeing to execute the Common Interest Agreement.

7. **REMEDIES.** Withdrawal pursuant to Paragraph 6.c and other any other remedy available at law shall be the exclusive remedies for any breach of this Agreement.

8. **FISCAL CONTINGENCY.** Notwithstanding any other provision of this Agreement to the contrary, the obligations of Fort Collins, Northern Water, Thornton, and Greeley (in this paragraph, "Governmental Entity"), in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Governmental Entity having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement, and the failure of the Governmental Entity to appropriate such funds shall be grounds for the Governmental Entity to withdraw from this Agreement pursuant to Paragraph 6.c. Likewise, all commitments by the CWCB are subject to sufficient funds being appropriated for such commitments, at the sole discretion of the CWCB.

9. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement and there are no third-party beneficiaries.

10. **GOVERNING LAW AND ENFORCEABILITY.** This Agreement shall be construed in accordance with the laws of the State of Colorado. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the Parties respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

11. **WAIVER.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement. Nothing in this Agreement shall be construed as any waiver of governmental immunity of the Parties who are Governmental Entities or the CWCB or any other governmental provisions of State law.

12. **NOTICES.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when mailed or e-mailed, addressed as follows:

To Association: Fischer, Brown, Bartlett & Gunn, P.C.  
1319 East Prospect Rd.  
Fort Collins, CO 80525  
danbrown@fbgpc.com

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

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

and: Fort Collins Utilities  
Attn: Water Resources Manager  
700 Wood Street P.O. Box 580  
Fort Collins, Colorado 80522-0580

and: Natural Areas Department  
745 Hoffman Mill Road  
Fort Collins, Colorado 80524  
jstokes@fcgov.com; dfiggs@fcgov.com

To Water Trust: Director of Programs  
1420 Ogden Street, Suite A2  
Denver, Colorado 80218

To Northern Water: General Manager  
220 Water Avenue  
Berthoud, Colorado 80513

To Greeley: Greeley Water and Sewer Department  
Attn: Water Resources Operations Manager  
1001 11<sup>th</sup> Avenue, Second Floor  
Greeley, Colorado 80631  
jennifer.petrzelka@greeleygov.com

With copy to: Greeley City Attorney's Office  
Attn: Environmental and Water Resources  
1100 10<sup>th</sup> Street, Suite 401

Greeley, Colorado 80631  
daniel.biwer@greeleygov.com

To: CWCB

Stream and Lake Protection Section  
1313 Sherman St., Rm. 718  
Denver, Colorado 80203  
DNR\_CWCBISF@state.co.us

With copy to:

Office of the Attorney General  
Attn: Water Conservation Unit, Natural  
Resources Section  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, Colorado 80203  
Ema.schultz@coag.gov

To Thornton:

Thornton Water Resources Division  
Attn: Water Resources Manager  
9500 Civic Center Drive  
Thornton, Colorado 80229  
emily.hunt@cityofthornton.net

With copy to:

Thornton City Attorney's Office  
Attn: City Attorney  
9500 Civic Center Drive  
Thornton, Colorado 80229

To: CPW

Water Resources Section Manager  
Colorado Parks and Wildlife  
6060 Broadway  
Denver, CO 80216

With copy to:

Colorado Department of Law  
Attn: Elizabeth Joyce  
Natural Resources Section  
Parks, Wildlife and Trust Lands Unit  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, CO 80203  
Elizabeth.joyce@coag.gov

13. **CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was drafted by the Parties together. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein. This Agreement binds and benefits the

Parties and their respective successors and assigns. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

15. **REPRESENTATIONS.** Each Party represents to the other parties that it has the power and authority to enter into this Agreement and the individual signing below on behalf of that Party has the authority to execute this Agreement on its behalf and legally bind that Party.

16. **ASSIGNMENT.** No Party may assign any rights or delegate any duties under this Agreement without the written consent of all other Parties.

17. **INTERGOVERNMENTAL AGREEMENT.** The Parties that are Governmental Entities agree this Agreement is an intergovernmental agreement pursuant to Article XIV, Sec. 18 of the Colorado Constitution and C.R.S. 29-1-201 est. seq. inclusive.

18. **NO OPERATING OBLIGATION.** Nothing in this Agreement shall be deemed or construed as creating any obligation on any of the Parties to operate their water rights or their raw or treated waterworks systems in any particular manner. Each party retains sole and exclusive discretion concerning the operation of their water rights and waterworks systems.

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**CACHE LA POUDRE WATER USERS ASSOCIATION, a Colorado non-profit corporation**

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

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**CITY OF FORT COLLINS, COLORADO, a Colorado home rule municipality**

By: \_\_\_\_\_

Darin A. Atteberry, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

City Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_

Eric Potyondy

City Attorney's Office

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**COLORADO WATER TRUST, a Colorado non-profit organization**

By: \_\_\_\_\_  
Andy Schultheiss, Executive Director

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

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**NORTHERN COLORADO WATER CONSERVANCY DISTRICT, a political subdivision of  
the State of Colorado**

By: \_\_\_\_\_  
Brad Wind, General Manger

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

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**CITY OF GREELEY, COLORADO, a Colorado home rule municipality**

By: \_\_\_\_\_  
Roy Otto, City Manager

Date: \_\_\_\_\_

AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney's Office

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**CITY OF THORNTON, COLORADO, a Colorado home rule municipality**

By: \_\_\_\_\_  
Kevin S. Woods, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Luis A. Corchado, City Attorney

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**COLORADO WATER CONSERVATION BOARD, an agency of the STATE OF COLORADO**

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

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**COLORADO PARKS AND WILDLIFE, an agency of the STATE OF COLORADO**

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

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## EXHIBIT A

DISTRICT COURT, WATER DIVISION NO. 1 Weld County Courthouse 901 9 <sup>th</sup> Avenue P.O. Box 2038 Greeley, Colorado 80631	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF:  <b>CACHE LA POUDRE WATER USERS ASSOCIATION, CITY OF FORT COLLINS, CITY OF GREELEY, COLORADO WATER TRUST, NORTHERN COLORADO WATER CONSERVANCY DISTRICT, CITY OF THORNTON, AND COLORADO WATER CONSERVATION BOARD</b>	▲ COURT USE ONLY ▲
IN LARIMER AND WELD COUNTIES, COLORADO.	
Attorneys for Cache la Poudre Water Users Association: Dan Brown, #30799 Fischer, Brown, Bartlett & Gunn. P.C. 1319 E. Prospect Road Fort Collins, CO 80525 Telephone: (970) 407-9000 Email: danbrown@fbgpc.com  Attorneys for City of Fort Collins: Eric R. Potyondy, #38243 Fort Collins City Attorney's Office 300 LaPorte Avenue Fort Collins, CO 80521 Telephone: (970) 416-2126 Email: epotyondy@fcgov.com  Attorneys for City of Greeley: Dan Biwer, #46308 1100 10th Street, Suite 401 Greeley, CO 80631 Telephone: (970) 350-9291 Email: Daniel.Biwer@Greeleygov.com	Case Number: 20__CW____  <b><u>DRAFT FOR DISCUSSION</u></b> <b><u>PURPOSES ONLY</u></b>

**DRAFT FOR DISCUSSION PURPOSES ONLY**

<p>Attorneys for the Colorado Water Trust:  Zach Smith, #41575  1420 Ogden Street, Suite A2,  Denver, Colorado 80218  Telephone: (720) 570-2897  Email: zsmith@coloradowatertrust.org</p> <p>Attorneys for the Northern Colorado Water Conservancy District:  Lisa Thompson, #35923  Trout Raley  1120 Lincoln St., Suite 1600,  Denver, CO, 80203-2141  Telephone: (303) 861-1963  Email: lthompson@troutlaw.com</p> <p>Attorneys for the City of Thornton:  David C. Taussig, #16606  Alan E. Curtis, #34571  White and Jankowski, LLP  511 Sixteenth Street, Suite 500  Denver, Colorado 80202  Telephone: (303) 595-9441  Email: davet@white-jankowski.com</p> <p>Attorneys for Colorado Water Conservation Board:  Cynthia H. Coffman, Attorney General  Ema I. G. Schultz, #40117 (Counsel of Record)  Jennifer L. Mele, #30720 (Counsel of Record)  Natural Resources and Environment Section  Colorado Department of Law  1300 Broadway 7th Floor  Denver, CO, 80203  Telephone: 720-508-6307  Email: ema.schultz@coag.gov</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case Number: 20__CW____  (continued)</p>
<p align="center"><b>APPLICATION FOR APPROVAL OF A PLAN FOR AUGMENTATION  FOR INSTREAM FLOW PURPOSES ON THE CACHE LA POUDE RIVER</b></p>	

**DRAFT FOR DISCUSSION PURPOSES ONLY**

1. **Name, mailing address, email address, and telephone number of Applicants.**

Cache la Poudre Water Users Association  
1319 East Prospect Rd.  
Fort Collins, CO 80525  
Telephone: (970) 407-9000  
Email: danbrown@fbgpc.com

City of Fort Collins ("Fort Collins")  
c/o John Stokes, Director of Natural Areas Department  
1745 Hoffman Mill Road (80524)  
P.O. Box 580  
Fort Collins, CO 80522  
Telephone: (970) 416-2815  
Email: jstokes@fcgov.com

City of Greeley ("Greeley")  
c/o Jennifer Petrzelka, Water Resources Operations Manager  
1001 11<sup>th</sup> Avenue, Second Floor  
Greeley, CO 80631  
Telephone: (970) 350-9859  
Email: jennifer.petrzelka@greeleygov.com

Colorado Water Trust  
c/o Karen Wogsland, Director of Programs  
1420 Ogden St., Suite A2  
Denver, CO 80218  
Telephone: 720-570-2897  
Email: kwogsland@coloradowatertrust.org

Northern Colorado Water Conservancy District  
c/o General Manager  
220 Water Avenue  
Berthoud, Colorado 80513  
Telephone: (970) 622-2320  
Email: bind@northernwater.org

City of Thornton ("Thornton")  
c/o Water Resources Division  
12450 Washington Street  
Thornton, Colorado 80241  
Telephone: (720) 977-6600  
Email: emily.hunt@cityofthornton.net

**DRAFT FOR DISCUSSION PURPOSES ONLY**

Colorado Water Conservation Board (“CWCB”)  
 1313 Sherman St., Room 718  
 Denver, CO 80203  
 Telephone: (303) 866-3441  
 Email: Kaylea.White@state.co.us

2. **General Description of Application.** The Cache la Poudre River (“Poudre River”) is one of the hardest working rivers in the State. Co-Applicants and others have been exploring options to improve the Poudre River as a healthy, working river. One of those efforts focused on preserving and improving flows in the Poudre, particularly downstream of the canyon mouth to the confluence of the South Platte River, at times when flows would improve the ecological health of the river, while ensuring that such options would not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights. As a result, the Co-Applicants and other parties have entered into various agreements related to this matter, which may be revised or amended in the future.

Pursuant to those agreements and this Application, Co-Applicants seek judicial approval of a plan for augmentation, as defined in C.R.S. §37-92-103(9), “to increase the supply of water available for beneficial use” in and along the Poudre River from the canyon mouth to its confluence with the South Platte River (“Poudre Flows Plan” or “Plan”). Such beneficial use includes the preservation and improvement of the natural environment to a reasonable degree as authorized pursuant to the Water Right Determination and Administration Act, C.R.S. §§37-92-101 *et seq.* See C.R.S. §37-92-102(3). This will be accomplished through operation of the Poudre Flows Plan as described in this Application. The Plan will not injuriously affecting the owners of or persons entitled to use water under vested water rights or decreed conditional water rights.

This Application is based on the CWCB’s authority to acquire interests in water rights through contractual arrangements pursuant to C.R.S. §37-92-102(3) and to file applications in Water Court, utilizing the water rights it acquires, including applications for plans for augmentation. *Id.* CWCB does not by this application seek an appropriate instream flow water right pursuant to C.R.S. §37-92-102(3).

3. **Need for Augmentation.** Co-Applicants will augment flows in six defined segments of the Poudre River from the canyon mouth at the Canyon Gage to the Poudre River’s confluence with the South Platte River (“Augmented Segments”), as set forth below:

<b>Segment</b>	<b>Upper Boundary</b>	<b>Lower Boundary</b>
<b>A</b>	Canyon Gage	Larimer and Weld Canal Diversion
<b>B</b>	Larimer and Weld Canal Diversion	Spring Creek Confluence
<b>C</b>	Spring Creek Confluence	New Cache la Poudre Ditch Diversion
<b>D</b>	New Cache la Poudre Ditch Diversion	County Road 17 Crossing



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<b>E</b>	County Road 17 Crossing	59 <sup>th</sup> Avenue Bridge
<b>F</b>	59 <sup>th</sup> Avenue Bridge	South Platte River Confluence

A map showing the approximate location of the Augmented Segments are shown on Exhibit A to this Application.

The canyon mouth is in the NW1/4 of Section 15, Township 8 North, Range 70 West. (All legal locations herein are based on the 6<sup>th</sup> P.M.) The Poudre River then flows through the following sections: Section 15, Township 8 North, Range 70 West; Sections 14, 13, 24, and 25, Township 8 North, Range 70 West; Sections 30, 29, 32, 33, and 34, Township 8 North, Range 69 West; Sections 3, 2, 12, and 13, Township 7 North, Range 60 West; Sections 18, 17, 20, 21, 28, 27, and 34, Township 7 North, Range 68 West; Sections 3, 2, 11, 14, 13, and 24, Township 6 North, Range 68 West; Sections 19, 20, 29, 28, 33, 34, 35, and 36, Township 6 North, Range 67 West; Sections 31, 32, 33, 34, 35, 26, and 36, Township 6 North, Range 66 West; Sections 31 and 32, Township 6 North, Range 65 West; Sections 5, 4, 9, 10, 11, and 1, Township 5 North, Range 65 West; and Section 6, Township 5 North, Range 64 West. The confluence of the Poudre River and the South Platte River is in the SW1/4 of Section 6, Township 5 North, Range 64 West.

The Canyon Gage is located in the NW1/4 of Section 15, Township 8 North, Range 70 West. The Larimer and Weld Canal Diversion is located in the SW1/4 of Section 34, Township 8 North, Range 69 West. The Spring Creek Confluence is located in the SW1/4 of Section 17, Township 7 North, Range 68 West. The New Cache la Poudre Ditch Diversion is located in the NE1/4 of Section 11, Township 6 North, Range 68 West. County Road 17 Crossing is located along the section line between Sections 28 and 29, Township 6 North, Range 67 West. The 59<sup>th</sup> Avenue Bridge is located along the section line between Sections 33 and 34, Township 6 North, Range 66 West. The South Platte River Confluence is located in the SW/14 of Section 6, Township 5 North, Range 64 West.

The Augmented Segments will be augmented under the Poudre Flows Plan to preserve and improve the natural environment to a reasonable degree up to the rates of flow (in cubic feet per second (“cfs”)) set forth in the following table.

<b>Segment</b>	<b>Winter (Nov 1 – Mar 31) Preserve</b>	<b>Winter (Nov 1 – Mar 31) Improve</b>	<b>Summer (Apr 1 – Oct 31) Preserve</b>	<b>Summer (Apr 1 – Oct 31) Improve</b>
<b>A</b>	Up to 55	55 - 85	Up to 85	85 - 130
<b>B</b>	Up to 55	55 - 85	Up to 85	85 - 130
<b>C</b>	Up to 30	30 - 54	Up to 40	40 - 80 above I-25 40 - 54 below I-25
<b>D</b>	Up to 10	10 - 35	Up to 10	10 - 40
<b>E</b>	Up to 15	15 - 30	Up to 15	15 - 30

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<b>F</b>	Up to 15	15 - 30	Up to 15	15 - 30
----------	----------	---------	----------	---------

These flow rates were quantified by Colorado Parks and Wildlife in its *Flow Quantification Report for the Cache la Poudre River in Larimer and Weld Counties*, dated July 2018. The specific length of the Poudre River wherein flows will be augmented at any specific time will depend on the Introduction Point and Terminal Point (as defined in Paragraph 5 below) for each Augmentation Source (as defined in Paragraph 4 below), included in the Poudre Flows Plan.

At a regularly scheduled board meeting on January\_\_\_\_, 2018 the CWCB board determined that using acquired water, including the Augmentation Sources listed below, up to the above flow rates are appropriate to preserve and improve the natural environment to a reasonable degree. In addition to the other claims set forth in this Application, the CWCB seeks confirmation from the Court of the CWCB's determination that using acquired water rights, including the Augmentation Sources listed below, up to the flow rates listed above are appropriate to preserve and improve the natural environment to a reasonable degree.

4. **Water Rights to Be Used for Augmentation ("Augmentation Sources").** Applicants intend to include the following expressly identified "Seed Water Rights" as Augmentation Sources in the Poudre Flows Plan. Co-Applicants seeks confirmation from the Court that the uses of these Seed Water Rights in the Poudre Flows Plan are in conformance with the applicable decree and will be subject to the terms and conditions of those decrees.

- 4.1. **Fort Collins' 1992CW129 and 2005CW323 Southside Ditch Companies Changed Water Rights.** Water rights, all sourced from the Poudre River, represented by certain shares owned by Fort Collins in the Arthur Irrigation Company, Larimer County Canal No. 2 Irrigating Company, New Mercer Ditch Company, and Warren Lake Reservoir Company, were quantified and changed in Case No. 1992CW129 and Case No. 2005CW323, Water Division No. 1, among other things, to include various new uses including augmentation use. The following information concerning these sources can be found in the decrees entered in Case No. 1992CW129 and Case No. 2005CW323: the dates of the original decrees and all relevant subsequent decrees, the types of water rights, legal descriptions of each point of diversion and storage structure, the sources of water, the appropriation dated, the decreed amounts, and the decreed uses. A more complete description of these water rights is shown on Exhibit B to this Application. The locations of the structures are shown on Exhibit C to this Application. Exhibit D to this Application is the current agreement between the CWCB and Fort Collins regarding these water rights, which may be revised or amended in the future.

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- 4.2. **Greeley's 1999CW232 and 2015CW3163 Greeley Irrigation Company Changed Water Rights.** Water rights represented by shares owned by Greeley in the Greeley Irrigation Company ("GIC"). Greeley quantified and changed the type, manner, and use of certain of its GIC shares in Case Nos. 1999CW232 and 2015CW3163, Water Division No. 1. More specifically, Greeley changed these GIC shares to include alternate points of re-diversion and places of storage, and to include a number of additional uses beyond irrigation, including augmentation. A more complete description of the water rights to be included by Greeley in the Poudre Flows Plan via agreement with the CWCB is shown on Exhibit E to this Application. The locations of the structures are shown on Exhibit F to this Application. Exhibit G to this Application is the current agreement between the CWCB and Greeley regarding these water rights, which may be revised or amended in the future.
- 4.3. **Thornton's TNP Decree.** The TNP Decree adjudicated in the *Findings of Fact, Conclusion of Law, Judgment and Decree on Remand* in Consolidated Cases No. 86CW401, 86CW402, 86CW403, and 87CW332 ("TNP Decree") changed Thornton's interests represented by shares in the Water Supply and Storage Company ("WSSC") for native water rights in the Poudre River Basin and transmountain water rights as described in attached Exhibit H to this Application, which was Exhibit B to the TNP Decree (WSSC Water Rights). The TNP Decree also changed Thornton's interests represented by shares in the Jackson Ditch Company ("JDC") for native water rights in the Poudre River Basin as described in attached Exhibit I to this Application, which was Exhibit C to the TNP Decree (JDC Water Rights). The TNP Decree changed the WSSC and JDC to alternate types and places of use including among other things, augmentation in the Poudre and South Platte basins pursuant to the terms of the decree in paragraphs 11.3.1 and 11.3.2. The Poudre River Exchange in Case No. 86CW401, the WSSC Ditch Exchange in Case No. 86CW402, and the 1986 Appropriations in 86CW403 from the TNP Decree will not be part of or included in this Plan.
- 4.4. **Thornton's TNP by Exchange Decree.** Thornton also adjudicated exchanges of TNP Decree water rights in Case No. 96CW1116 *Findings of Fact, Conclusions of Law, Ruling and Decree* entered October 20, 2005 ("TNP by Exchange Decree"). The sources of water for the Plan are described in paragraph 15.1.1 as: (1) the WSSC and JDC water rights changed in the TNP Decree; and (2) Thornton's share of transmountain water excluding all water and return flows attributable to C-BT Project (collectively "TNP by Exchange Sources"). Exhibit to this Application is an *Agreement for the Use of Certain Thornton Water Rights in the Poudre River ISF Augmentation Plan* between Thornton and the CWCB effective

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January \_\_ 2019 that provides the CWCB with a contractual interest in the TNP Decree and the TNP by Exchange for use in the Poudre Flows Plan.

5. **Additional or Alternative Water Rights to Be Used for Augmentation.** Applicants further seek that any decree entered in this case include procedures to allow the use of additional or alternative Augmentation Sources pursuant to C.R.S. §37-92-305(8)(c). „ Specifically, Applicants seek a mechanism to add Augmentation Sources to the Plan after the decree is entered pursuant to C.R.S. § 37-92-305(8)(c) identified as “Added Water”. Applicants intend that the use of the Added Water delivered to the Poudre River will increase the supply of water in the Augmented Segments, including diverting, measuring, and delivering to the stream Added Water that is attributable to: (1) a water right that has been changed by decree or granted administrative approval to be legally available for augmentation use; (2) a nontributary, transmountain, or other developed water right that is legally available for augmentation use; or (3) a water right decreed or administratively approved to be legally available for augmentation use. *See, e.g.,* C.R.S. §§37-92-308, 37-92-309.
6. **Complete Statement of the Plan.**
  - 6.1. Applicants, in various combinations, are parties to certain contractual agreements related to the Poudre Flows Plan, which set forth the responsibilities of the parties, including work cooperatively on filing this Application and operation of the Poudre Flows Plan once in place, relying on the CWCB’s statutory authority to enter into leases and agreements to acquire interests in water to be used for instream flow purposes. *See* C.R.S. §37-92-102(3). The CWCB has acquired a contractual interest in the Seed Water Rights identified in Paragraph 4 above, pursuant to CWCB Rule 6 of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, and will acquire or has acquired interests in water rights from certain parties and others for use in the Poudre Flows Plan.
  - 6.2. Applicants intend to augment flows in the Poudre River from the canyon mouth to its confluence with the South Platte River. The use of the Augmentation Sources in this plan will be pursuant to agreements between the owner(s) of the Augmentation Sources and the CWCB. Applicants specifically intend to measure and deliver Added Water to the Poudre River at various points (“Introduction Points”). Once the Added Water has been measured and delivered to the stream at an Introduction Point, it will be used to augment stream flows to preserve and improve the natural environment to a reasonable degree. Subject to terms and conditions that will not injuriously affect the owners of or persons entitled to use water under vested water rights or decreed conditional water rights, the Added

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Water will be shepherded downstream from the Introduction Points to various downstream points (“Terminal Points”). Between the specific Introduction Point and Terminal Point for each Augmentation Source, the Added Water will be placed to augmentation use in the stream and will be under the Applicants’ dominion and control and will thus not be available for use or diversion by others (including diversions by, under, or pursuant to exchanges, substitute water supply plans, plans for augmentation, or other means that cause a reduction to the Added Water within the stream segment(s), other than reductions caused by accounted for evaporation, transportation, and other losses). For Applicants to maintain dominion and control of the Augmentation Source, State water officials must be capable of administering the water past intervening headgates at times when those headgates are not legally entitled to divert all available flow in or “sweep” the river. Nothing herein is intended to compel existing water users to alter river headgate operations to bypass water they otherwise could lawfully divert unless by written agreement or consent. When the Augmentation Water reaches the Terminal Point, it may be reused or successively used for beneficial use in accordance with the applicable underlying decree(s) or administrative approval(s) for the Augmentation Sources, less any transit losses assessed by the Division Engineers that are incurred between the specific Introduction Point and Terminal Point. The Added Water will be measured as required by C.R.S. §37-92-502(5)(a) and the terms and conditions of any decree entered in this case.

- 6.3. This application does not include any claims for exchanges or changes of water rights.
7. **Name(s) and address(es) of owner(s) or reputed owner(s) of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool.**

**DRAFT FOR DISCUSSION PURPOSES ONLY**

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

FISCHER, BROWN, BARTLETT & GUNN, P.C.

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: \_\_\_\_\_

Dan Brown (#30799)

Attorneys for the Applicant, Cache la Poudre Water  
Users Association

FORT COLLINS CITY ATTORNEYS OFFICE

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: \_\_\_\_\_

Eric R. Potyondy (#38243)

Attorneys for the Applicant, the City of Fort Collins

GREELEY CITY ATTORNEYS OFFICE

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: \_\_\_\_\_

Dan Biwer (#46308)

Attorneys for the Applicant, the City of Greeley

COLORADO WATER TRUST

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: \_\_\_\_\_

Zach Smith (#41575)

Attorneys for the Applicant, Colorado Water Trust

TROUT RALEY

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: \_\_\_\_\_

Lisa Thompson (#35923)

Attorneys for the Applicant, Northern Colorado  
Water Conservancy District

**DRAFT FOR DISCUSSION PURPOSES ONLY**

WHITE AND JANKOWSKI, LLP

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: \_\_\_\_\_  
David C. Taussig (#16606)

Attorneys for the Applicant, City of Thornton

COLORADO ATTORNEY GENERAL'S OFFICE

*Signature* on file pursuant to C.R.C.P. 121 § 1-26(7)

By: \_\_\_\_\_  
Ema I. G. Schultz (#40117)  
Jennifer L. Mele (#30720)

Attorneys for the Applicant, Colorado Water  
Conservation Board

Notary Public



Notary Public

Notary Public

Notary Public

Notary Public

Notary Public

Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served a true and correct copy of the foregoing **APPLICATION FOR APPROVAL OF PLAN FOR AUGMENTATION FOR INSTREAM FLOW PURPOSES ON THE CACHE LA POUDE RIVER** by ICCES e-filing addressed to the following:

Division Engineers	Division 1 Water Engineer	State of Colorado DWR Division 1
State Engineers	Colorado Division Of Water Resources	State of Colorado - Division of Water Resources

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/s/ *signature* on file  
Pursuant to C.R.C.P. 121, §1-26(7)

**WATER & SEWER BOARD AGENDA    SEPTEMBER 19, 2018**

ENCLOSURE   X              NO ENCLOSURE       

ITEM NUMBER:                    5

TITLE:    ACTION: APPROVE AND RECOMMEND TO  
COUNCIL ACQUISITION OF EASEMENTS  
FOR NORTH GREELEY SEWER PHASE IIA

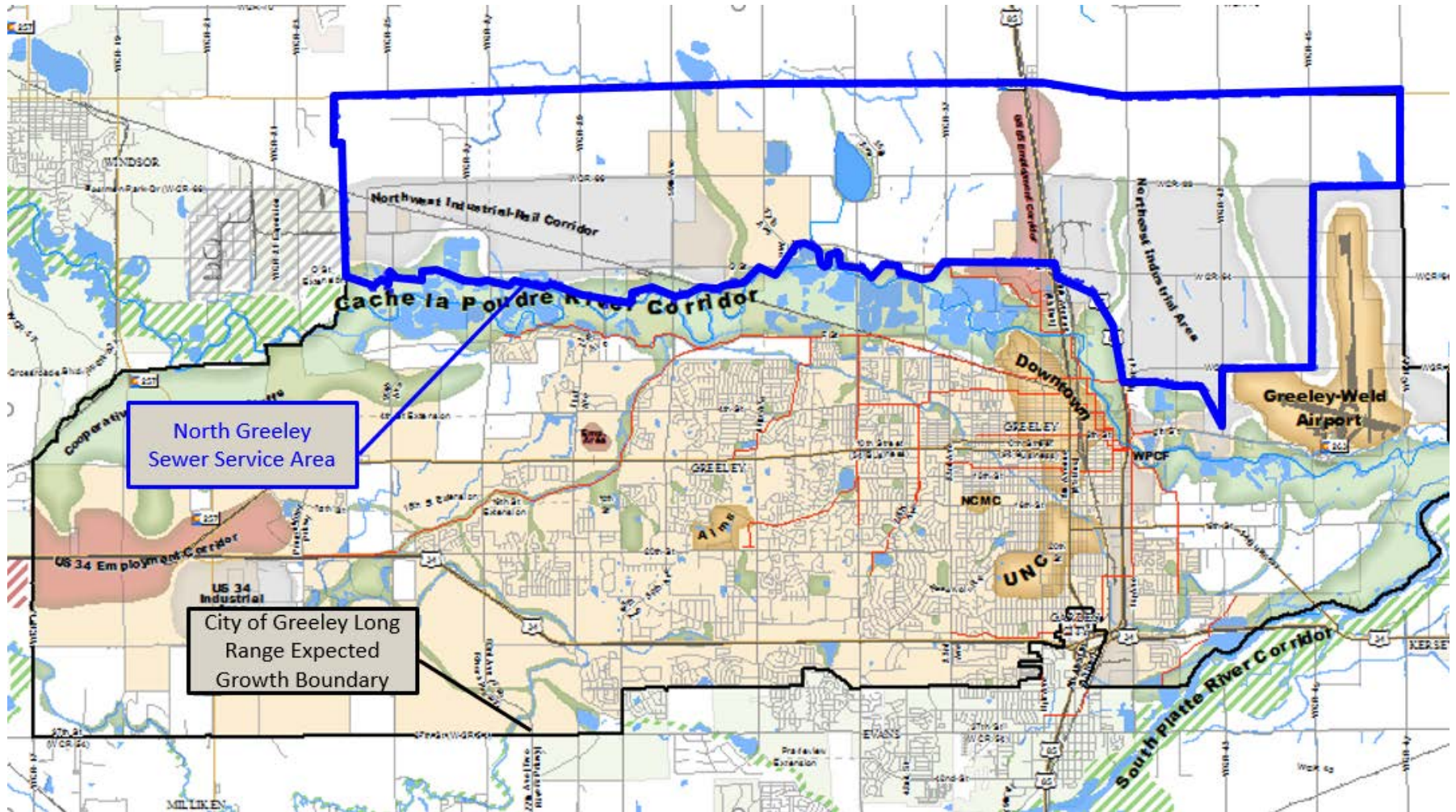
RECOMMENDATION:            APPROVE AND RECOMMEND TO COUNCIL

**ADDITIONAL INFORMATION:**

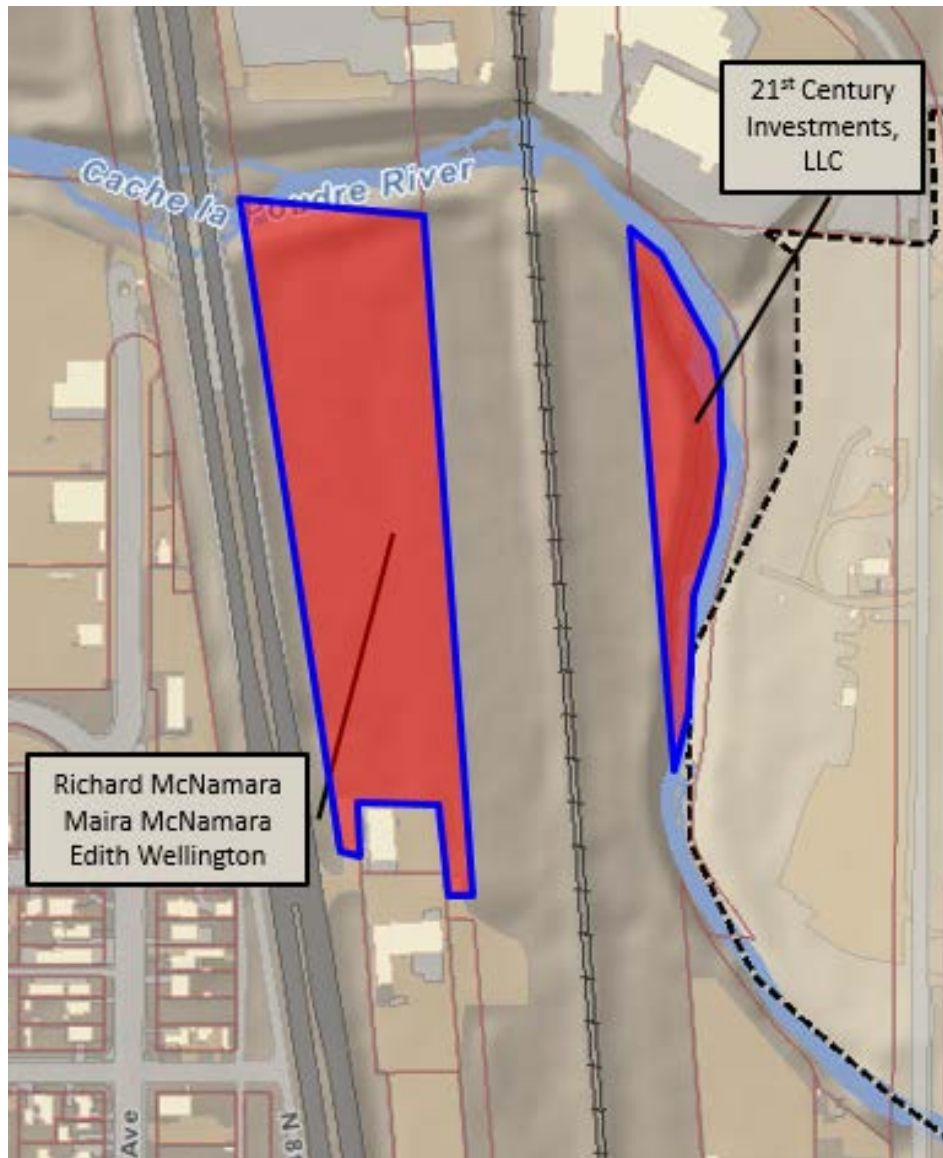
The Original Resolution and Ordinance (No. 13, 2014) for acquisition of easements for North Greeley Sewer IIA defined the specific easement that the City was looking to acquire. The design of the project has changed necessitating the acquisition of a different easement. (The original easement will be vacated.) Therefore, an additional Resolution and Ordinance will be required for the new acquisition.



## Exhibit A Service Area



## Exhibit B Property Locations



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

**RESOLUTION NO.\_\_\_\_, 2018**

CONCERNING THE ACQUISITION OF INTERESTS IN REAL PROPERTY LOCATED IN WELD COUNTY, COLORADO FOR A SANITARY SEWER LINE BY PURCHASE OR EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO SECTION 7 OF ARTICLE XVI, SECTION 15 OF ARTICLE II, AND SECTIONS 1 AND 6 OF ARTICLE XX OF THE COLORADO CONSTITUTION AND COLO. REV. STAT. § 38-1-101, et seq. (NORTH GREELEY SEWER PHASE IIA)

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

**WHEREAS**, Section 15 of Article II and Section 7 of Article XVI of the Colorado Constitution further authorize the City to acquire sewer pipeline easements for domestic, irrigation, drainage, and other purposes; and

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

**WHEREAS**, the Board has determined that the development and use of additional sanitary sewer lines and associated facilities to serve the North Greeley Sewer Service Area (“Service Area”), generally depicted in Exhibit A, attached hereto and incorporated herein, are necessary for the operation of the water works and needed to increase the capacity of sanitary sewer service to the citizens of the City, and thereby, promote growth; and

**WHEREAS**, the Service Area is generally experiencing growth and redevelopment into more intensive land uses; and

**WHEREAS**, the City’s staff and counsel believe that additional sewer lines will need to be installed in the ground at varying depths, and that, accordingly, acquisition of certain real property interests, generally depicted in Exhibit B, attached hereto and incorporated herein, is necessary to construct and maintain the additional sewer lines within the Service Area.

**WHEREAS**, the Board has determined that the acquisition of interests in real property, either through purchase or exercise of the power of eminent domain, is necessary for the development and use of additional sewer lines within the Service Area; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

1. The Board hereby determines that it is necessary for the City to acquire, either through purchase or exercise of the power of eminent domain, real property interests, including permanent easements and temporary construction easements, for the installation, operation, maintenance, repair, and replacement of sanitary sewer lines for the operation of the water works within the Service Area to increase the capacity of sanitary sewer service to the citizens of the City and thereby promote growth.
2. The Board hereby determines that the acquisition of real property for the above-described purposes is necessary.
3. The City's staff and counsel are hereby authorized and directed to continue with the acquisition of interests in real property, either through purchase or exercise of the power of eminent domain. The Board hereby ratifies any previous actions by City staff in attempting to negotiate acquisition of the real property.

PASSED AND ADOPTED, SIGNED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**ATTEST:**

\_\_\_\_\_  
Secretary to the Board

\_\_\_\_\_  
Board Chairman

**WATER & SEWER BOARD AGENDA    SEPTEMBER 19, 2018**

ENCLOSURE \_\_\_\_

NO ENCLOSURE \_\_\_\_

ITEM NUMBER:                    6

TITLE:                                REPORT: INTRODUCTION OF COMMERCIAL  
AND MULTI-FAMILY RAW WATER  
REQUIREMENTS POLICY

RECOMMENDATION:        INFORMATIONAL ONLY

**ADDITIONAL INFORMATION:**

Staff will introduce a proposal for modifying the raw water requirements for commercial and multi-family development. The non-residential raw water requirements were last modified in 1989 and are based on the tap size. The proposed policy would change raw water requirements to a volume of use based methodology. The proposed change would seek to enhance the precision of raw water requirements for a wide range of commercial, multi-family and mixed use development projects. The draft proposal is enclosed along with the presentation to be given to the Board.





# **Raw Water Requirements for Commercial & Multi-Family Development**

September 19, 2018

# Overview

- Introducing the proposal
- Seeking board member input

# Background

- Two types of water development fees
  - Plant investment fee (PIF) is for the impact to the infrastructure of the system (plants and pipes)
  - Raw water is the volume of water needed for annual usage
    - Current method for determining the requirement differs between residential and non-residential



# Background-Raw Water

- Raw water requirements currently determined two ways
  - Residential: 3 acre feet/acre
  - Non-residential: determined by tap size

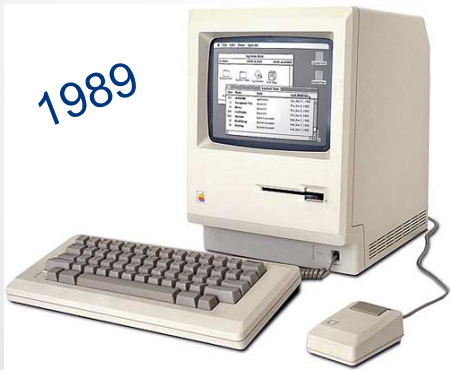
Tap Size	Raw Water Requirement (AF)
3/4"	0.75
1"	2
1 1/2"	3
2"	8
3"	12
4"	24
6"	208
8"	352

# Raw Water Challenges

- Non-residential: Taps are sized to meet peak flow demand, but peak flow does not necessarily correlate with annual water usage
- Three acre feet/acre may not be collecting enough raw water for large multi-family projects
- Annual effort to collect the raw water surcharge for developments that did not dedicate enough raw water
  - Surcharge currently based on C-BT, amortized over 20 years
  - Does this adequately account for over usage?
- Fundamental issue: How do we best balance simplicity with precision when it comes to raw water requirements?

# Why Change Raw Water Requirements?

- Development has changed
  - Multi-family and commercial diversity increased
- Non-residential raw water requirements have not changed since 1989
  - Water use data more available now
  - Technology and water efficiency improvements



# Conceptual Framework of Proposal

- Base raw water requirements on use for all developments except single family residential
  - Non-residential currently based on tap size
  - Service commitment agreements required to ensure the City is not shorted raw water
  - After 2 years of use above dedication volume, additional raw water is required through a cash-in-lieu payment
- Multi-family to be treated like commercial and mixed use development
  - No longer uses 3 AF/acre standard
  - PIF calculation consistent with commercial/mixed use

# Conceptual Framework of Proposal, cont.

- PIF based on tap size which is determined through fixture counts
  - Currently the development community has an incentive to use the smallest tap possible to avoid a higher raw water requirement
- Separate taps for each use
  - Example: Mixed use would have 3 taps: one for commercial, residential and landscaping

# Raw Water Requirements

Category Name	Units	Unit Use (Gallons per unit per year)
Auto Service & Repair	sf	15
Car Wash	bay	96,445
Childcare	sf	60
Church	sf	35
Clubhouse/Pool	sf	TBD
Grocery Store	sf	38
Gas Station w/o Car Wash	sf	120
Hospital	sf	55
Hotel/Motel	room	23,566
Medical Office	sf	25
Multi-Family (greater than 4 units)	unit	50,000
Office	sf	8
Recreation w/ pool	sf	100
Recreation w/o pool	sf	50
Restaurant	sf	200
Retail	sf	29
School	sf	20
Senior Housing	unit	50,000
Warehouse/Industrial	sf	7



# Raw Water Requirements

- Westminster has used this methodology since the mid 2000's
- Started with their usage per customer type and compared against Greeley customers.
  - Some modifications, although most were not significant

# Next Steps

- Engage BBC Research and Consulting for analysis of proposal
- Incorporate W&S Board input



# Questions/Comments?



## **Proposed Raw Water Dedication Requirements**

### **Tap Fees for New and Modified Water/Sewer Taps**

Tap fees are charged for all new water connections and may be charged for modifications to existing connections. There are four components to the tap fee.

1. Cash in Lieu of Raw Water
2. Water Plant Investment Fee
3. Sewer Plant Investment Fee
4. Water Meter

A separate tap is required for each single family detached and attached unit and for each multi-family and non-residential building. Buildings with mixed residential and commercial uses require separate taps for the residential and non-residential components of the building.

Irrigation for all non-residential and common areas in single family developments require separate irrigation taps.

### **Water Meter and Tap Sizing**

- Residential single family detached and attached houses have standard tap and water meter sizes.
- Multi-family and non-residential water taps and meters are sized based on the water use, which is determined by fixture, appliances and other water demands.
- Taps, water meters, and services lines must be the same size unless approved by the City.
- Non single family projects must complete the City's Plumbing Data Sheet for sizing. Multi-family units with four or less units do not need to complete the Plumbing Data Sheet.

### **Cash in Lieu of Raw Water**

- No Cash in Lieu fees are due if there is enough acceptable raw water dedicated to the City or if there is enough raw water credit associated with existing taps on the property being developed. Any raw water dedication must be approved by City staff.
- Cash in Lieu fees are based on the amount of water required for the project on an annual basis.
- Residential single family detached and attached taps pay a standard fee based on the type of residential unit.
- Water demand for non-residential projects are calculated based on the type of business and the square footage of the business area.
- Cash in Lieu fees are paid according to each user's service commitment. Each customer's service commitment represents its expected annual volume of water use.

- If water use in a new commercial or multi-family building exceeds its service commitment in any two consecutive years, the owner will be required to purchase additional water through a cash in lieu payment.
- Service commitment pricing is based on the current cash-in-lieu of water prices for Greeley.

### **Water Plant Investment Fee**

- The water plant investment fee (PIF) is charged based on the size of the water tap.
- The fee recovers the cost related to the potential peak flow of water through a water tap.
- The City's treatment and distribution system must be sized for the combined peak flows of all the individual taps. Each tap must pay for its portion of the total system peak flow.

### **Water Meter Charge**

- The water meter charge is per each meter installed based on the size of the meter.
- Meters to be used are provided by the City.

### **Sewer Plant Investment Fee**

- The sewer plant investment fee is charged based on the size of the water tap

### **Payment Timing**

Building and irrigation tap fees are paid at the time of building permit issuance.

2019 Residential Tap Fee Schedule				
	Meter Charge	Water PIF	Cash in Lieu	Sewer PIF
Single Family per Unit	\$304	\$10,800	Lot Acreage x 3 AF/ac x CIL Price*	\$5,700
Multi-Family per Unit if 4 Units or Less	Based on meter size	\$5,400	Lot Acreage x 3 AF/ac x CIL Price*	\$2,850
*Three acre feet per acre is the standard raw water requirement for residential development. Developments with covenants requiring low water use landscaping may qualify for a lower raw water requirement.				

### Tap Fee Example:

A 20,000 square foot office building requiring an estimated 1.5” water tap would be calculated as follows:

Referring to the 1.5” water tap on the Non Residential Tap Fee Schedule you add the tap size components:

Meter Charge	\$1,392
Water Plant Investment Fee	\$10,800
Sewer Plant Investment Fee	\$5,700
Total	\$17,892

The next step is to look up the Office business category in the 2019 Business Category and Water Use table. Multiply 8 gallons per square foot by 20,000 square feet for a total annual gallons requirement of 160,000 gallons. Divide that by 325,851 (gallons in an acre foot of water) to determine the water resource service commitment. Multiply that by the **\$29,000** Cash in Lieu cost listed on the Non-Residential Tap Fee Schedule for the total Cash in Lieu cost of **\$29,000**. Add the two totals together for an estimated tap fee of \_\_\_\_\_.

Category Name	Units	Unit Use (Gallons per unit per year)
Auto Service & Repair	sf	16
Car Wash	bay	96,445
Childcare	sf	60
Church	sf	35
Clubhouse/Pool	sf	TBD
Grocery Store	sf	38
Gas Station w/o Car Wash	sf	120
Hospital	sf	55
Hotel/Motel	room	23,566
Medical Office	sf	25
Multi-Family (greater than 4 units)	unit	50,000
Office	sf	8
Recreation w/ pool	sf	100
Recreation w/o pool	sf	50
Restaurant	sf	200
Retail	sf	29
School	sf	20
Senior Housing	unit	53,000
Warehouse	sf	7
Industrial	Determined on a case by case basis	

Restaurant outdoor seating areas with partial or full seasonal coverings are counted at 50% for building square footage.

2019 Non-Residential Tap Fee Schedule				
Meter Size	Meter Charge	Water PIF	Cash in Lieu	Sewer PIF
5/8" and 3/4"	\$304	\$10,800	Calculated based on Water Resources allocated	\$5,700
1"	\$444	\$18,000		\$9,550
1-1/2"	\$1,392	\$36,000		\$19,100
2"	\$1,594	\$57,600		\$30,500
3"	\$7,175	\$126,000		\$66,850
4"	\$10,465	\$216,000		\$114,600
6"	\$13,404	\$450,000		\$238,700

### Irrigation Tap Fees

Irrigation tap fees are charged based on the irrigation area and the landscape type. The size of the tap determines the water plant investment fee and meter charge. The raw water requirement is determined based off the area and type of landscaping. Landscape plans with more than 75% high water use vegetation are assumed to be entirely high water using and calculated as such.

High Water Use (>14 gals/sf annual use)	$(CIL \text{ price} \times 3)/43,560 = \text{raw water charge/sf}$
Medium Water Use (10-14 gal/sf annual use)	$(CIL \text{ price} \times 2.3)/43,560 = \text{raw water charge/sf}$
Low Water Use (<10 gals/sf annual use)	$(CIL \text{ price} \times 1.6)/43,560 = \text{raw water charge/sf}$

**WATER & SEWER BOARD AGENDA**    SEPTEMBER 19, 2018

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:                7

TITLE:                        LEGAL REPORT

POSSIBLE ACTION:         STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION:        INFORMATION ONLY

ADDITIONAL INFORMATION:

## **WATER & SEWER BOARD AGENDA    SEPTEMBER 19, 2018**

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:                    8

TITLE:                                 REPORT: FINAL COMMENTS ON NISP EIS

RECOMMENDATION:        INFORMATION ONLY

### **ADDITIONAL INFORMATION:**

Staff will provide a report to the Water & Sewer Board regarding the issuance of the final environmental impact statement (FEIS) for the Northern Integrated Supply Project (NISP). In general, the Northern Colorado Water Conservancy District (Northern) provides water and operates infrastructure that serves numerous communities along the Front Range of Colorado. Northern, acting on behalf of 15 municipal and rural domestic water providers (Participants), requested a Clean Water Act Section 404 Permit from the Corps' Omaha District Regulatory Branch to undertake NISP. The proposed project would provide 40,000 acre-feet of new reliable water supply, which would meet a portion of the Participants' future water supply needs. The project proposes the construction of two new reservoirs, Glade and Galetton, with capacities of 170,000 and 45,624 acre-feet, respectively. The Corps is the lead federal agency and has been preparing an EIS since 2004 to analyze environmental effects.

The Corps published a Draft Environmental Impact Statement (DEIS) for NISP on April 30, 2008 for public comment. Substantial comments were received during three public hearings held for the DEIS as well as during the comment period. The Corps determined that additional analysis was required and that the purposes of the National Environmental Policy Act (NEPA) would be furthered through the issuance of a Supplemental Draft Environmental Impact Statement (SDEIS). The Corps published a SDEIS for NISP on June 19, 2015 for public comment. Greeley submitted comments on the SDEIS to the Corps on August 31, 2015. On July 20, 2018, the Corps published the Final EIS with comments from the public due on October 4, 2018.

Staff's report will include a general description of NISP, Greeley's 2015 comments on the SDEIS, and the Corps response to those comments in the FEIS. At the conclusion of the report, staff will be requesting that the board enter into executive session for the purpose of "[d]etermining 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 "[c]onferences 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).

**WATER & SEWER BOARD AGENDA SEPTEMBER 19, 2018**

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           9

TITLE:                   EXECUTIVE SESSION

RECOMMENDATION:    INFORMATION ONLY

ADDITIONAL INFORMATION:



**WATER & SEWER BOARD AGENDA**    SEPTEMBER 19, 2018

ENCLOSURE   X  

NO ENCLOSURE       

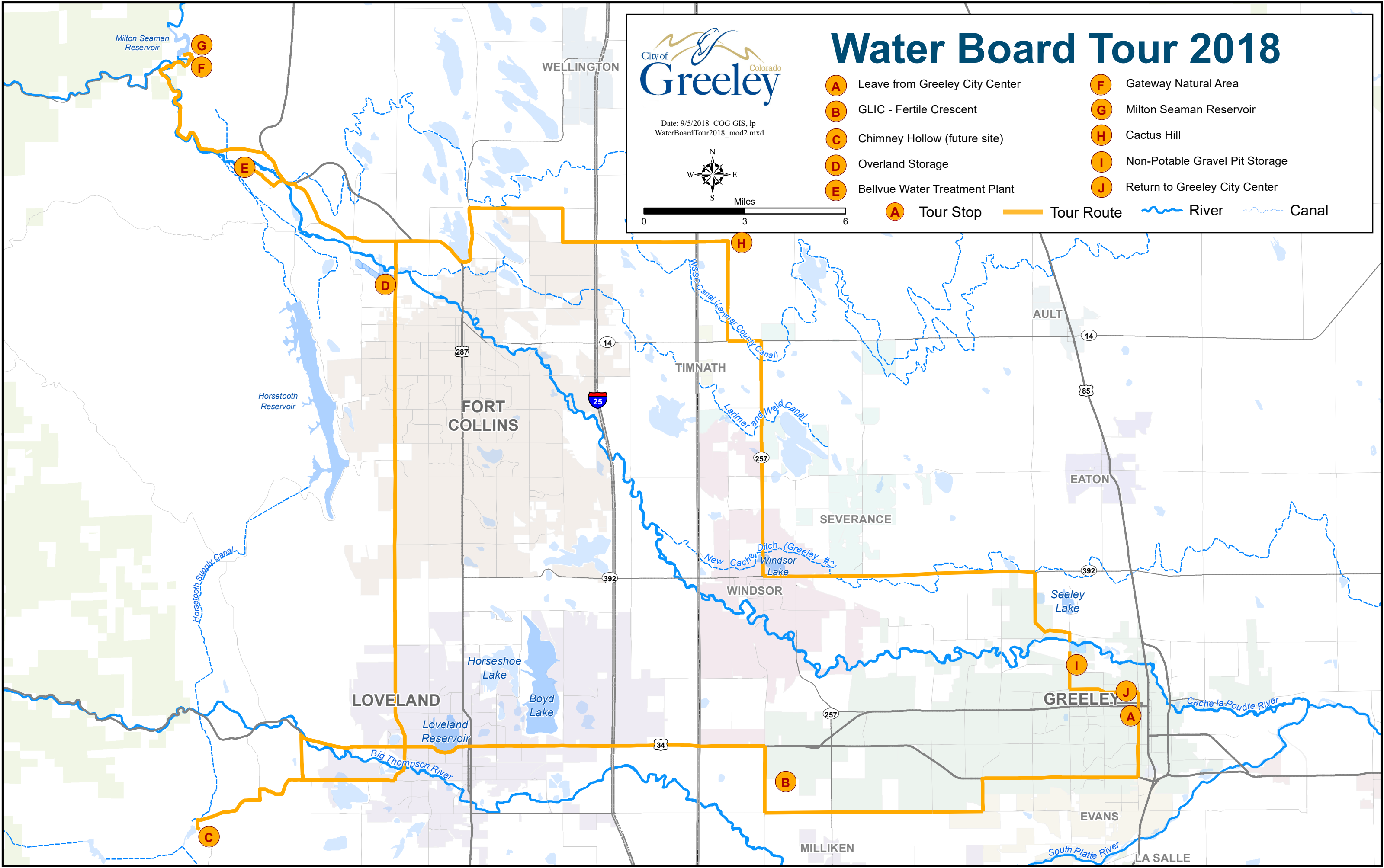
ITEM NUMBER:            10

TITLE:                    DIRECTOR'S REPORT

RECOMMENDATION:    INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Board / Council Tour
- Outstanding Debt Update
- Newsletter



City of  
**Greeley**  
Colorado

Date: 9/5/2018 COG GIS, lp  
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# Water Board Tour 2018

A

Leave from Greeley City Center

B

GLIC - Fertile Crescent

C

Chimney Hollow (future site)

D

Overland Storage

E

Bellvue Water Treatment Plant

A

Tour Stop

F

Gateway Natural Area

G

Milton Seaman Reservoir

H

Cactus Hill

I

Non-Potable Gravel Pit Storage

J

Return to Greeley City Center

Tour Route

River

Canal



# Water & Sewer Department

## MEMORANDUM

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TO: Water and Sewer Board

THROUGH: Sean Chambers, Interim Water and Sewer Director

FROM: Erik Dial, Utility Finance Business Manager

DATE: September 19, 2018

RE: Outstanding Water and Sewer Debt

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During the discussion regarding the Water and Sewer Board's approval of the 2018 water and sewer bond resolutions, the Board inquired about the existing debt principal in the water and sewer funds. The following tables list the past bond issuances and the remaining principal balances.

Water Fund	Principal Remaining	Years Remaining
1999 CWRPDA	\$1,062,784	1
2012 Revenue	\$21,360,000	13
2014 Revenue Refunding	\$5,855,000	6
2016 Revenue Refunding	\$30,385,000	10
Total	\$58,662,784	

Sewer Fund	Principal Remaining	Years Remaining
2015 Revenue	\$4,830,000	11

# Colorado's stressed reservoirs hit new lows, state extends drought response

by Jerd Smith | Sep 12, 2018 | Climate and Drought, Environment, Gunnison River, Instream Flow, Yampa/White/Green |



Photos shows Blue Mesa Reservoir near Gunnison in 2017, when the giant storage pond was nearly full. Credit: U.S. Bureau of Reclamation.

After a summer of blazing 90-plus degree days and weeks without rain, Colorado's water reservoirs, the critical storage systems designed to get us through dry times, are just half full on average, and in southwestern parts of the state they are far lower.

"We're seeing a record decline in storage because it's been so hot," said Taryn Finnessey, chair of the state's Water Availability Task Force.

Precipitation is tracked from Oct. 1 through Sept. 30 each year in a measure known as a water year. And the 2018 water year is on track to be the state's second driest on record, with the seared 2002 drought year continuing to hold that distinction, according to Brian Domonkos, snow survey supervisor for the Natural Resources Conservation Service. Domonkos and his team are responsible for tracking snowfall and rain across Colorado.

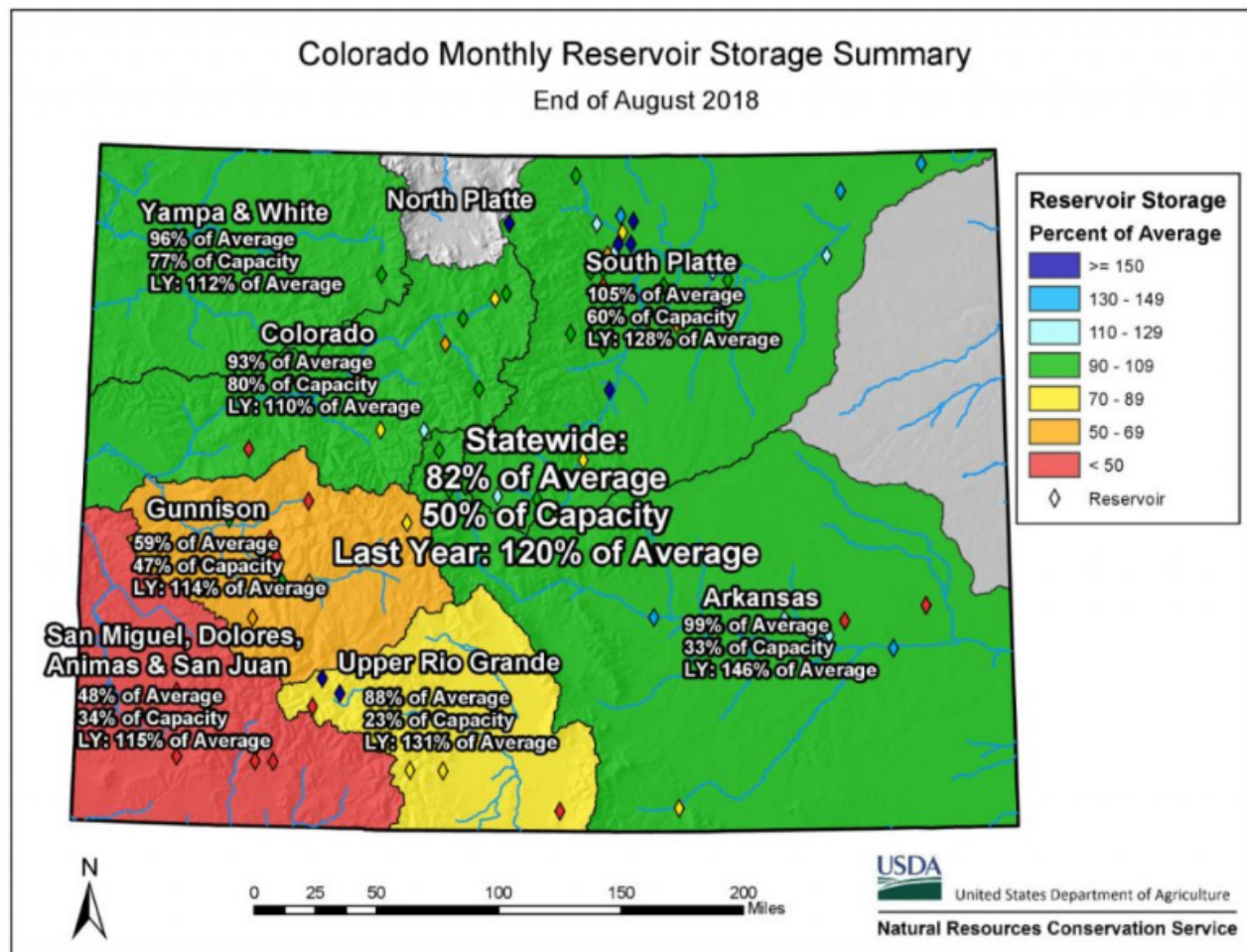
State officials activated a drought response plan in May covering 34 counties in the southwestern part of the state. The activation gives farmers and others access to various relief programs, such as low-interest loans, and triggers a coordinated monitoring program among state agencies charged with helping those hurt by the dry weather.

Because summer rains have done little but tamp down the dust, Finnessey said Colorado will keep its drought plan activated through the winter and, in fact, may expand it to six counties in northwestern Colorado, including three in the heart of Colorado ski country. Newly added counties are likely to include Pitkin, Eagle, Summit, Grand, Moffat and Routt.

Northwestern Colorado, home to the Yampa River, has been historically dry and hot this summer. Once known for its legendary, generous streamflows, the Yampa for the first time ever saw water use curtailed as flows tanked in the face of the relentless heat.

For days in Steamboat Springs, Division Engineer Erin Light, the top water regulator on the Yampa, carefully monitored stream gauges, knowing that big diversions were scheduled to occur that would completely dry up the waterway. The practice is known as sweeping the stream.





She and her staff started driving the river daily to monitor how bad it was. Finally, after seeing long stretches of dusty riverbed, she made the decision Sept. 5 to order water use cut back, placing what's known as a call on the mainstem of the river for the first time in history.

Light said it was an educational moment for ranchers and other water users who've long been accustomed to a Yampa River that faithfully delivered whatever they needed. "They thought they were call-proof," Light said.

The Front Range and parts of the Eastern Plains have had more water than the rest of the state, although the hot temps have taken a toll. Denver Water said in a statement that its storage reservoirs are 85 percent full. Normally they would be 91 percent full after a summer of lawn watering.

Farther south and west in the Gunnison River Basin more bad-news water records are being set almost every week. With just over two weeks remaining until the official water year ends Sept. 30, the scenic region, home to the Black Canyon of the Gunnison National Park, is on track to see its driest year in history, according to NRCS's Domonkos. Right now it's below the record dry mark set, again in 2002, and if the region doesn't get 3.5 inches of additional rain by the end of the month, 2018 will claim the driest-year-in-the-Gunnison title, according to Domonkos.

It's not just the scorched summer that has state water officials worried, however. Those who track the seven-state Colorado River Basin, which includes Wyoming, Utah, Colorado, New Mexico, Nevada, Arizona and California, are seeing worrisome new patterns develop.

Flows in the river declined 16.5 percent between 1916 and 2014, according to a new study released last week.

"About half of this decline is due to increasing temps, and the other half is due to patterns in where the precipitation falls," said Brad Udall, a scientist and scholar with the Colorado Water Institute at Colorado State University and one of the study's authors.

"Precipitation has moved from the highly productive basins in Colorado to these less effective basins in Utah's deserts, where it doesn't do a good job of showing up in the river," Udall said.

Looking ahead to the coming winter, climate experts say there is a roughly 70 percent chance that an El Nino weather pattern will develop. If it arrives, it should deliver much-needed moisture to Arizona and New Mexico and possibly Colorado's hard-hit San Juan Mountains in the state's southwestern corner. But how much moisture will fall farther north isn't clear yet.

Peter Goble is a climatologist and drought specialist with CSU's Colorado Climate Center.

"The El Niño is definitely developing so we're hoping for better snowpack numbers this year, but we won't get excited until we see more of these El Niño patterns develop in late October or early November," Goble said.

And what everyone would like to see is a return to something that more closely resembles normal. For the state to claw its way back to average before the end of this year would require 11 inches of rain on average to fall statewide before Sept. 30, according to Domonkos.

Is that likely? Not really, he says. The month of September delivers 2 inches on average. In a more normal weather year, Colorado would receive just 16 inches of precipitation for the entire year.

CSU's Goble says this year delivered a surprising one-two punch - first came the ultra-light snowpack and then a summer of super-hot temperatures. He and others are grateful that the state came into the year with reservoirs brimming with water thanks to the big snows of 2017.

But if 2019 delivers another river-busting dry spell, one in which the stressed reservoir system can't recoup its supplies, the damage from this drought will grow dramatically.

"Because we went into this water year with good storage, people have been getting by even though it's been difficult," said Kevin Rein, the state engineer and Colorado's chief water regulator. "If we have another winter and spring like 2018, it will be very bad."

Jerd Smith is editor of Fresh Water News. She can be reached at 720-398-6474, via email at [jerd@wateredco.org](mailto:jerd@wateredco.org) or [@jerd\\_smith](https://www.instagram.com/jerd_smith).

Fresh Water News is an independent, non-partisan news initiative of Water Education Colorado. WEco is funded by multiple donors. Our editorial policy and donor list can be viewed [here](#).



**WATER & SEWER BOARD AGENDA**    SEPTEMBER 19, 2018

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:            11

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: