



Remote Meeting Instructions for the April 21, 2021, Water & Sewer Board Meeting:

In order to comply with all health orders and State guidelines to stop the spread of the COVID-19 Coronavirus, **no physical location, including the City Council Chambers, will be set up for viewing or participating in this Water & Sewer Board meeting.**

You can view this Meeting by following the instructions below to watch the YouTube live stream. By utilizing this option to view the meeting, you will not be able to provide live input during the meeting. To provide live input, see the "In real time" instructions near the bottom of this page.

- From your laptop or computer, click the following link or enter it manually into your Web Browser: (<https://www.youtube.com/user/CityofGreeley>)
- Clicking the link above will take you to the City of Greeley's YouTube Channel.
- Once there, you will be able to view the meeting!

Citizen input and public comment for items appearing on this agenda as public hearings/quasi-judicial are valuable and welcome!

Anyone interested in participating and sharing public comments have a few of options:

Via email? – Submit to Ettie.arnold@greeleygov.com

All comments submitted this way will be read into the record at the appropriate points during this meeting in real time. Comments can be submitted up to and throughout this meeting.

Via traditional Mail? - Address to the Water & Sewer Department's Office, 1001 11th Avenue, Attn: Shannon Metcalf, Greeley, CO 80631

All written comments must be received no later than the day of the meeting. Again, written comments received by mail will also be read into the record in real time.

In real time? – <https://greeleygov.zoom.us/j/84462328419>

Clicking the link above will give you access to the live meeting where you will become a virtual audience member and be able to speak under Citizen Input on items not already on the agenda or during a scheduled public hearing.

Please visit the City's website at <http://greeleygov.com/government/b-c/boards-and-commissions/water-and-sewer> to view and download the contents of the March 17th Water & Sewer Board Meeting. You are also welcome to call the Water & Sewer Department at 970-350-9801 with any special needs or questions that you may have.



WATER & SEWER BOARD AGENDA

Wednesday April 21, 2021

2:00 p.m.

MEETING WILL BE LIVE STREAMED ON YOUTUBE.COM DUE TO CITY CLOSURES

RELATED TO COVID-19 Public Comments, please use:

<https://greeleygov.zoom.us/j/84462328419>

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. John Karner
2. Approval of Minutes
3. Approval of and/or Additions to Agenda

Consent Agenda

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

4. Approve Glover Grazing Lease Agreement
5. Approve Lower Latham Bypass Agreement
6. Adopt Joint Resolution Terminating the Industrial Water Bank
7. Approve and Recommend to Council the Balmer Farm Easement Divestment

End of Consent Agenda

8. Welcome New Employees and Promotions
9. Water Supply Update and Adequacy Determination
10. Approve and Recommend to Council the Evans Sewer Service Intergovernmental Agreement
11. Approve and Recommend to Council an Intergovernmental Agreement Regarding Rehabilitation Work for the Cameron Peak Fire
12. Approve Non-Agricultural Water Rental Policy



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.

13. Presentation and Overview of Pretreatment Program Modifications
14. 1st Quarter Water Court Update
15. Legal Report
16. Director's Report
 - Tier 3 Violation Report in Bill Stuffer
 - Wildfire Recovery Update
 - Terry Ranch Celebration
17. 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 January 20, 2021
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, March 17, 2021. Due to City Closures related to COVID-19, this meeting was held remotely and was aired via live stream for public viewing at <https://www.youtube.com/user/CityofGreeley>.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

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

Water and Sewer Department Staff:

Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Manager Jen Petrzelka, Water Resources Asset Coordinator Cole Gustafson, Rates and Budget Analyst Kalen Myers and Office Manager Shannon Metcalf

Legal Counsel:

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

Other Guests:

2. Approval of Minutes

Mr. Ruyle made motion, seconded by Mr. Miller, to approve the February 17, 2021 Water and Sewer Board meeting minutes. The motion carried 7-0.

3. Approval of and/or Additions to Agenda

There were no changes to the agenda.

******Consent Agenda******

- 4. Approve Amendment No. 1 to the Memorandum of Understanding Regarding Water Quality Monitoring in Northern Colorado**

******End of Consent Agenda******

Vice-chairman Todd moved, seconded by Mr. Miller, to approve the item on Consent Agenda. The motion carried 7-0.

- 5. Welcome New Employees**

Mr. Chambers provided an introduction of new Water and Sewer Department employees starting this month.

- 6. Approve First Amendment to the Addendum Agreement between the Greeley and Loveland Irrigation Company and the City of Greeley**

Ms. Petrzalka delivered a presentation on this proposed amendment ("First Amendment") to a 1982 agreement ("Addendum Agreement") between the City of Greeley and the Greeley and Loveland Irrigation Company. The Addendum Agreement modified previous agreements between the City and Company allowing for the construction of the City's Boyd Water Treatment Plant and associated transmission infrastructure. The Addendum Agreement allowed the City to store 5,000 acre-feet of C-BT water in Lake Loveland. In 2018, Northern Colorado Water Conservancy District changed its accounting rules for C-BT. To ensure compliance with the rule change and maintain operational integrity at the Boyd Water Treatment Plant, the First Amendment would only commit the City to store 2,000 C-BT Units, at a storage rate of fourteen dollars per acre-foot for the 2021 water year, with a maximum annual increase thereafter of three percent.

Vice-Chairman Todd moved, seconded by Mr. Miller, to approve the First Amendment to the Addendum Agreement between Greeley and Loveland Irrigation Company and the City of Greeley, and delegate authority to staff to perform all terms and conditions contemplated thereunder. The motion carried 7-0.

- 7. 4th Quarter 2020 CIP Update**

Mrs. Cudahy provided an update on the 2020 Capital Improvement Projects. She reported on the status of distribution, transmission, man-hole rehab and water treatment plant projects.

8. Legal Report

Jim Noble of Welborn, Sullivan, Meck & Tooley stated Greeley's counsel and Water and Sewer Department staff had reviewed the resume of water court applications filed in January of 2021, and that they do not recommend for Greeley to file any statements of opposition in water court cases that would be due this month.

9. Executive Session

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

1. For the purpose of providing the Board legal advice on the Petitions to amend the City Charter and the Referendum to challenge City Council's passing of the Ordinance to Amend Chapter 14.06 of the Greeley Municipal Code; and,
2. For the purpose of providing the Board legal advice and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators on matters related to the water market and the potential, future water right acquisitions.

The motion carried 7-0.

The Board left the public session and moved into a private, executive session. The live feed of the public session on YouTube stopped recording, but was still accessible to the public. While the Board conducted the executive session, the public was provided with a screenshot of the agenda and a message stating the Board was in Executive Session.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Manual Sisneros, Joe Murphy, Tony Miller, Fred Otis, Bob Ruyle, Roy Otto, Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Operations Manager Jennifer Petrzeka, Water Administrator II Cole Gustafson, City Clerk Anissa Hollingshead, City Attorney Doug Marek, Outside Legal Counsel Jim Noble, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Environmental and Water Resources Attorney Aaron Goldman, and Senior Administrative Specialist Ettie Arnold

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

The Executive Session ended at 3:51 p.m. The Board then left the private, executive session and moved back into the open, regular session. At that time, the live feed of the meeting resumed on YouTube.

10. Director's Report

Mr. Chambers reported on the following items:

- Preview of April Agenda
- Terry Ranch Communication Summary

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

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

Chairman Evans adjourned the meeting at 4:20 p.m.

Harold Evans, Chairman

Shannon Metcalf, Office Manager

WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 4

TITLE: APPROVE GLOVER GRAZING LEASE
AGREEMENT

RECOMMENDATION: APPROVE GLOVER GRAZING LEASE

ADDITIONAL INFORMATION:

Water Resources staff recommend approval of the enclosed Grazing Lease Agreement between the City of Greeley and Dustin Glover. This agreement is for 136 acres on the former Tennyson property, including 126 acres of grazing land and 10 acres of cornfield. The City does not provide any water rights for irrigation of this property. There will be no cost for leasing the land in exchange for more focused grazing practices to promote better soil health in and around the Cache La Poudre riparian area. The proposed lease agreement expires in December 31, 2021, with staff to reevaluate renewal after the irrigation season.

GRAZING LEASE AGREEMENT

This GRAZING LEASE AGREEMENT ("Lease Agreement") is entered this ____ day of April 2021, between the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water Enterprise ("Greeley") and DUSTIN GLOVER, in his individual capacity ("Glover").

Recitals

WHEREAS, Greeley owns certain real property consisting of approximately 136 acres of land located in the West ½ of Section 34, Township 6 North, Range 66 West of the 6th P.M. in Weld County, Colorado, which property is shown and more particularly described on Exhibit A, attached hereto and incorporated herein ("Property"); and

WHEREAS, Greeley desires to manage rangelands on this and other of its properties in alignment with best practices to improve overall land health, including managing undesirable species by non-chemical means to the greatest extent practicable; and

WHEREAS, the Natural Areas & Trails division of the Greeley Culture, Parks and Recreation department provides much of the day-to-day land management on the Property; and

WHEREAS, Glover desires to use the Property for grazing purposes, and is willing to support and collaborate on the Greeley's weed management and other land management efforts on the Property in exchange; and

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

NOW THEREFORE, for bargained consideration, the receipt and sufficiency of which are hereby acknowledged, Greeley and Glover agree as follows.

Agreement

1. **LEASE**. Greeley hereby leases the Property to Glover for grazing purposes.
2. **TERM OF LEASE**. The term of this Lease Agreement begins on the date it is fully executed and ends on December 31, 2021.
3. **CONSIDERATION**. In exchange for his access to the Property, use of it for grazing purposes as is more particularly described below, and in lieu of paying rent, Glover agrees to graze the Property in a manner that supports the Greeley's land management efforts.
4. **IMPROVEMENTS**. With the exception of any existing fencing, there are no structures or improvements on the Property to which Glover is entitled use by this Lease Agreement.
5. **CONDITION OF PROPERTY**. Glover has inspected the Property and acknowledges that the Property is being leased "as-is." No representations, statements or warranties, express or implied, have been made by or on behalf of Greeley as to the condition of the Property. In no event shall Greeley be liable for any defect in the Property or for any limitation on its anticipated uses.

6. AUTHORIZED USE AND MANAGEMENT OF THE PROPERTY.

a. Glover shall occupy and use the Property solely for grazing of cattle. Glover shall not introduce any other livestock to the Property without advance written consent from Greeley. Such consent may be given or withheld in the sole discretion of Greeley.

b. Glover shall care for the Property in a manner consistent with sound agricultural and conservation practices, including the avoidance of overgrazing. If at any time Greeley suspects that Glover is overgrazing the Property, Greeley may use stocking calculations and NRCS methodology to assess range condition and determine remaining grazing days. Upon the determination pursuant to such an assessment that the Property has been overgrazed, Greeley may limit further grazing or terminate this Lease Agreement. Glover shall disperse watering troughs, mineral stations, and any similar facilities throughout the Property, and move them regularly, to avoid soil compaction or other detrimental impacts caused by concentrating animals in one area. Mineral stations shall be of a style that prevents the material from affecting the soil.

c. Glover shall furnish, at Glover's sole expense, all labor, machinery, water, and other materials needed for his use and occupation of the Property. Greeley leases no water nor water rights to Glover by this Lease Agreement.

d. Glover shall not mow the Property other than to keep vegetation clear of the electric wire fencing described below.

e. Greeley will manage noxious weeds on the Property that Greeley determines, in its sole discretion, are not sufficiently managed by grazing and other appropriate non-chemical means. Glover shall cooperate with Greeley in all such efforts and facilitate access to the Property by Greeley staff at all reasonable times for the purposes of weed eradication and associated activities. Glover shall not apply chemicals to the Property without advance written consent from Greeley. Such consent may be given or withheld in the sole discretion of Greeley. Glover shall not apply any materials to the Property that are prohibited by applicable local, state, or federal law, as applicable now or hereafter enacted.

7. LESSEE'S COVENANTS AND AGREEMENTS.

a. Glover shall take all necessary action to ensure that cattle are confined to the Property and not permitted to roam onto the Poudre River Trail or other adjacent parcels.

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

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

d. Glover shall not intentionally harass, injure, or kill any wildlife species on the Property, including, without limitation, non-domesticated amphibians, fish, birds, or mammals native to

the Greeley area. Glover shall contact Greeley and Colorado Parks and Wildlife to address any wildlife management concerns on the Property.

e. Glover shall not hunt or fish on the Property. Glover shall not allow any other party to hunt or fish on the Property.

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

g. Glover shall not assign this Lease Agreement, nor sublet the Property or any part thereof. Glover shall not pledge nor mortgage Glover's interest in this Lease Agreement without the prior written consent of Greeley, which consent is in the sole discretion of Greeley. Glover shall not directly nor indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property.

h. Glover shall not construct, nor permit construction of any structure, building or other improvement, temporary or otherwise, on the Property without the prior written consent of Greeley, which consent is in the sole discretion of Greeley. Glover shall not erect, paint, or maintain any signs on the Property, other than the signs required for the electric wire fencing, without the prior written consent of Greeley, which consent is in the sole discretion of Greeley. Glover shall promptly remove any such signs or improvements to which Greeley consents upon expiration or termination of this Lease Agreement.

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

j. Glover shall undertake reasonable measures to avoid the introduction of noxious weeds to the Property, including, without limitation, using certified weed-free feed and bedding, and by cleaning equipment before entering onto the Property.

k. Glover shall maintain the Property in as good repair and condition as it exists at the commencement of this Lease Agreement. Glover shall not damage the Property, including, without limitation, by vehicle use associated with grazing. Glover shall promptly notify Greeley of any such damage caused and immediately restore the Property to its previous condition.

l. Glover shall peaceably surrender possession of the Property to Greeley upon the expiration or termination of this Lease Agreement.

8. INDEMNIFICATION.

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

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

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

9. HAZARDOUS MATERIAL.

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

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

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

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

10. RESERVATIONS. Greeley reserves the right under this Lease Agreement to have its officers, employees, and representatives enter onto and inspect or protect the Property at any time for any purpose, including, without limitation, for site assessments, groundwater monitoring, weed management, and other associated activities.

11. TERMINATION FOR CAUSE.

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

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

12. INSURANCE REQUIREMENTS.

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

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

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

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

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

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

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

insurance coverage stated in this Lease Agreement, Greeley shall have the right to procure such insurance coverage at Glover's expense.

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

13. STATUS OF LESSEE. Glover shall conduct himself at all times under this Lease Agreement as an independent contractor and not as an employee, agent, or joint venture of Greeley. Glover's operations will not be supervised by any employee or official of Greeley, nor will Glover exercise supervision over any employee or official of Greeley. Glover shall not represent that he is an employee, agent, or joint venture of Greeley. Glover is not entitled to Workers' Compensation benefits from Greeley, and is solely responsible for any tax obligations associated with his activities pursuant to this Lease Agreement.

14. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

f. Glover shall perform all obligations under this Lease Agreement in strict compliance with all local, state, and federal laws, rules, charters, ordinances and regulations, as applicable now or later enacted or amended.

g. No term, condition, or covenant in this Lease Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person or entity other than Greeley or Glover receiving services or benefits under this Lease Agreement shall be considered an incidental beneficiary.

h. This Lease Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. No representations, warranties, or certifications, expressed or implied, shall exist as between the parties, except as specifically set forth in this Lease Agreement. The parties shall only amend this Lease Agreement in writing with the proper official signatures attached thereto.

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

j. Glover shall not record this Lease Agreement in the real property records of any jurisdiction. This Lease Agreement is not intended to create any benefit or burden that runs with real property.

k. This Lease Agreement shall extend to and be binding upon the heirs, successors, and permitted assigns of the parties.

l. This Lease Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Lease Agreement may be delivered by electronic means. The parties agree to accept and be bound by electronic signatures.

15. NOTICE. Any notice required by this Lease Agreement shall be deemed sufficient when provided by U.S. mail, hand delivery, or by electronic mail if receipt is acknowledged or no notice of non-delivery is received within three (3) days, using the information set forth below. Greeley and Glover shall promptly update the other party if the appropriate contact information changes.

If to Greeley: City of Greeley Water and Sewer
Attn: Water Resources Division
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
Email: alex.tennant@greeleygov.com

If to Glover: Dustin Glover
1412 25th Avenue Court
Greeley, Colorado 80634
Email: dustinglover54@gmail.com

IN WITNESS WHEREOF, the City of Greeley and Dustin Glover have executed this Grazing Lease Agreement as of the date stated in the preamble.

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

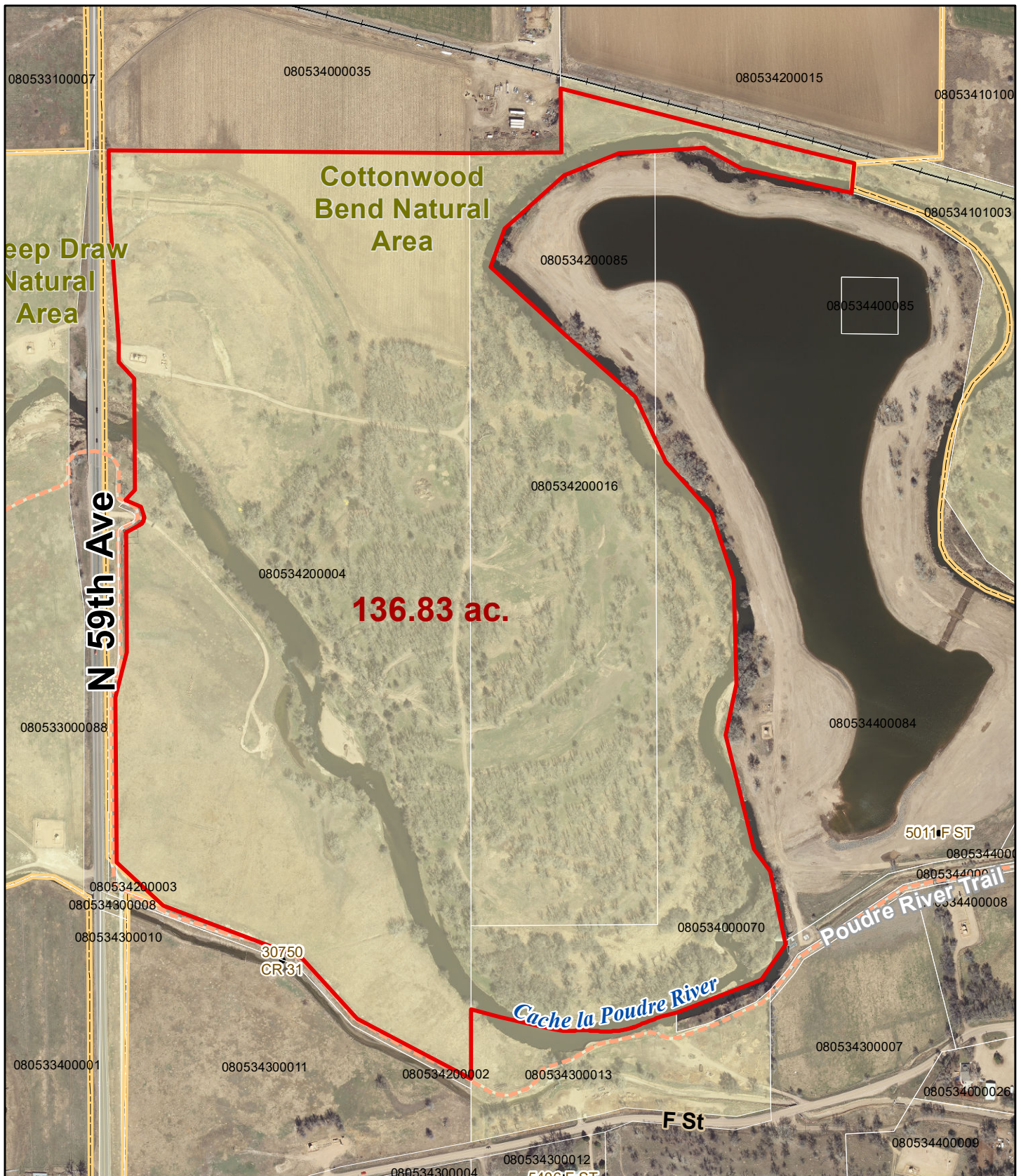
Attest:

By: _____
Mayor

City Clerk

DUSTIN GLOVER,
in his individual capacity

By: Dustin Glover



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

080534200016, 080534000070, 080534200004 136.83 ac.

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

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

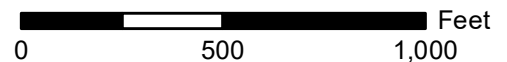


EXHIBIT B

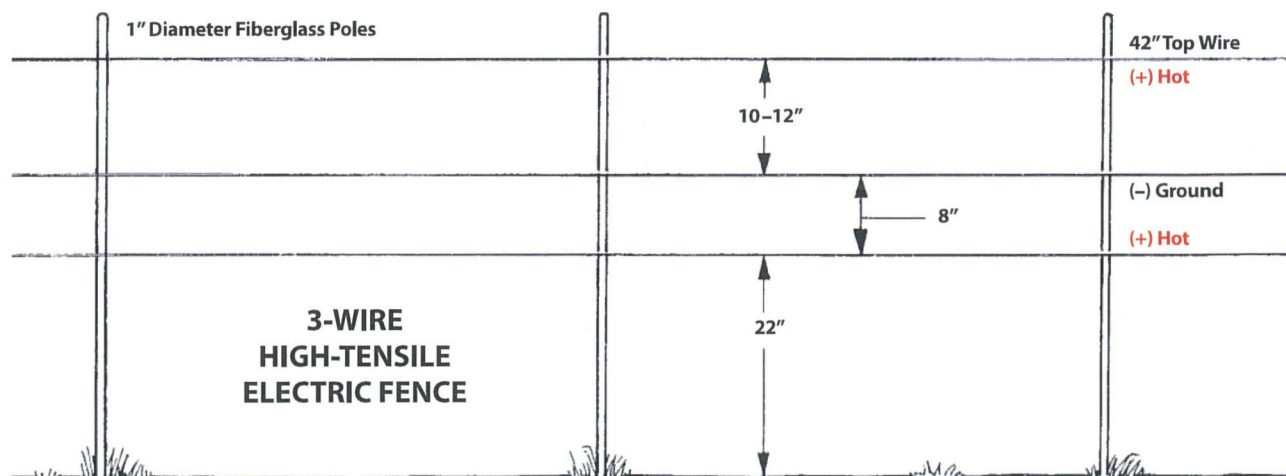
3-Wire High-Tensile Electric Fence

Researchers in Wyoming found that a 3-wire high-tensile fence (with a hot—ground—hot configuration) is not only effective for containing cattle and bison, but allows elk, mule deer, and pronghorn to traverse the fence. They found that wild ungulates usually were not deterred by electric fences—perhaps because of the insulating properties of their hair. Although wild ungulates were occasionally shocked when they nosed or bit a wire, or touched hot and grounded wires together, most animals readily negotiated the fences. Further, the researchers determined that 3-wire fences effectively contained bulls separated from cows coming into estrus, and calves from cows in the fall. Also, they found that a 3-wire fence was just as effective for containing bison as a 4-wire fence. A 2-wire fence can be used for areas without weaning calves but, curiously, pronghorn showed a high aversion to 2-wire fences, perhaps because of the novel height and their general reluctance to jump fences rather than crawl under (Karhu and Anderson 2003, 2006).

High-tensile fences require proper construction techniques, including adequate braces, proper tensioning, care not to kink or break wire, and proper attachments and insulators for posts and braces. However, high-tensile fences need minimal maintenance, provide great strength, can be easily electrified and will outlast most other fences.

- Maintaining fence flexibility is key to allowing wildlife to traverse the fence;
- Use fiberglass posts no greater than 1" in diameter;
- Brace fence with wood posts at least 5" in diameter; use braces at all corners, gates, and direction changes greater than 15 degrees. Appropriate insulators are needed with wooden posts;
- Space posts at a minimum of 50' apart if stays are used, and maximum of 50' apart with no stays;

- Fence stays can be problematic, making it harder for wildlife to pass between the wires, sometimes causing the fence to flip and twist when wildlife cross, and increasing the risk of grounding out the fence. If stays are used, the free span should be at least 30' for wildlife to cross effectively;
- Smooth, 12.5-gauge, Class III galvanized wire with a tensile strength of 170,000 PSI and breaking strength of 1,308 lbs. is adequate. To increase visibility, for the top wire use white poly-coated wire with the same specifications;
- Space wires at 22"/30"/40–42" from the ground. The top wire should be no higher than 42" with 10 to 12" between the top and middle wires. A bottom wire at 22" allows both young and adult wild animals to pass under easily. Connect wires to posts with metal clips or fasteners designed for electric fences;
- Top wire is hot; second wire is grounded, bottom wire is hot;
- Tighten wires to 150 lbs. tension. If too tight, the wires are more likely to break. Although high-tensile wire has a high breaking point, it is also more brittle, and easily broken if tightly bent or kinked;
- Place solar energizer according to manufacturer recommendations;
- Ground fence properly according to the energizer instructions, and add extra rods as needed. Locate ground rods at fence ends and intermittently in between;
- Keep fence electrified even when livestock are not present to prevent wildlife damage to fence. This also prevents the battery from freezing and prolongs battery life;
- Securely attach electric fence warning signs intermittently along the fence and at crossing points.



Grazing Lease Agreement with Dustin Glover

Presented by Alex Tennant
Water Resources Analyst

April 21, 2021



Background

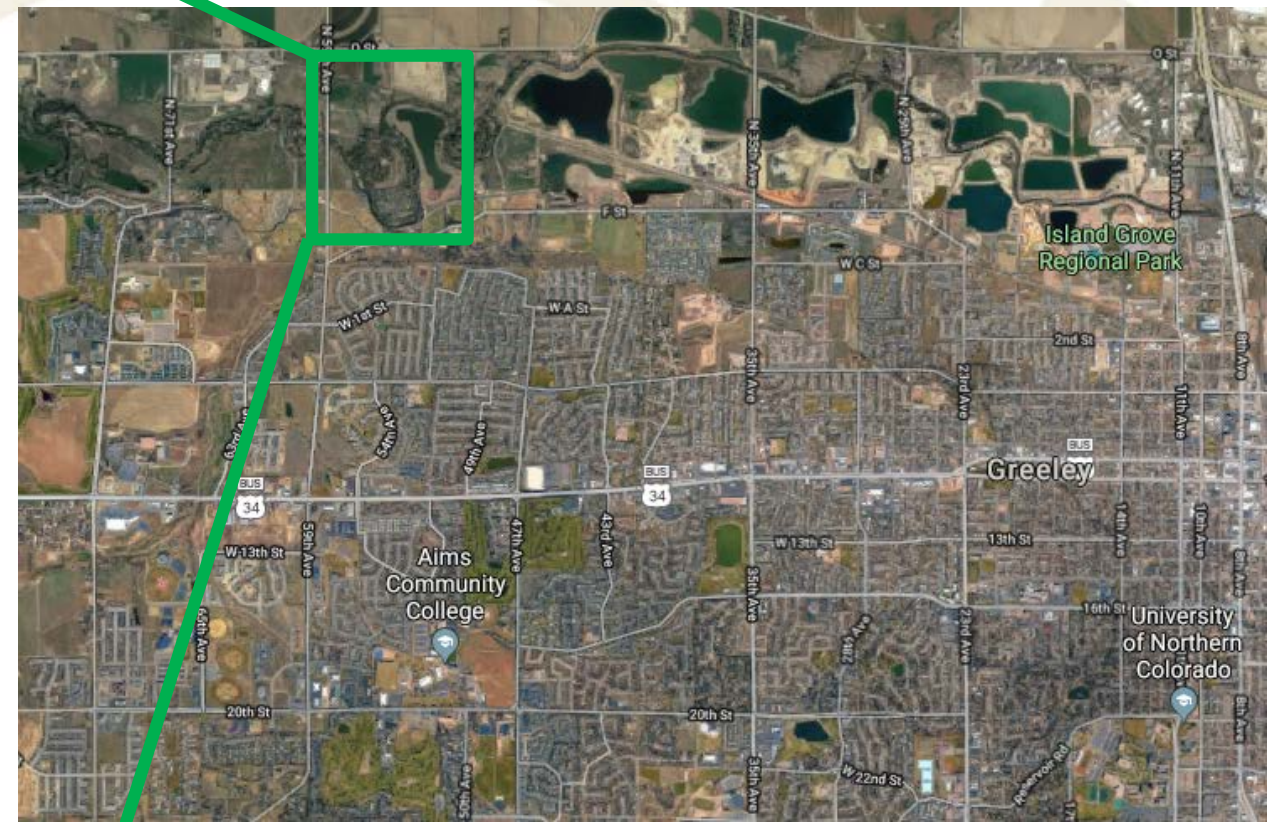
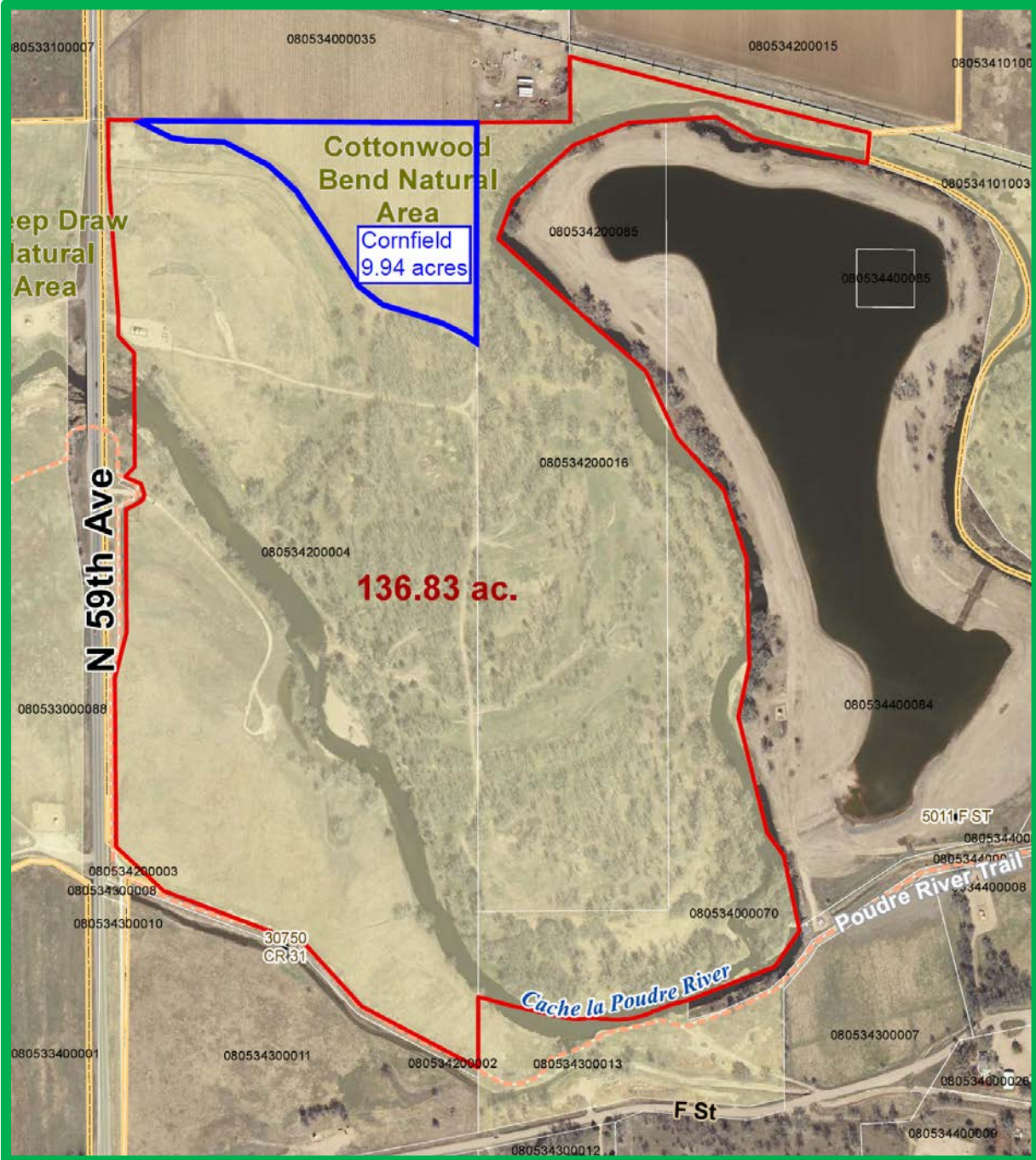
- Former Tennyson Property which consists of 136 acres
- In coordination with Natural Areas and Trails, Water & Sewer staff agreed to create a master grazing lease agreement with consistent terms throughout all Greeley owned grazing properties.
- Creates more guided grazing and weed control practices
 - Avoidance of over-grazing as to not degrade plant and soil health
 - Dispersing water troughs and mineral stations throughout the property with rotation to avoid soil compaction
 - Avoid chemical application for weed control



Terms

- **Property:** 136 acres, former Tennyson Property
- **Term:** One year agreement ending December 31, 2021. W&S and NAT will re-evaluate at the end of the year for renewal.
- **Termination:** The agreement will terminate after 2021 and must be yearly renewed by W&S for 2022.
- **Amount:** No payment, coordinated with NAT and is concurrent with master grazing lease agreement.
- Lease is subordinate to Conservation Easement





Recommendation

- This grazing lease agreement creates consistency among City of Greeley owned grazing properties and ensures grazing with effective and conservation based practices
- Staff recommends approving the agreement



Questions?



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 5

TITLE: APPROVE LOWER LATHAM BYPASS
AGREEMENT

RECOMMENDATION: APPROVE AGREEMENT

ADDITIONAL INFORMATION:

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

BYPASS LICENSE AGREEMENT

This License Agreement is entered into this _____ day of _____, 2021 by and between City of Greeley ("Licensee"), and the Lower Latham Ditch Company ("Latham").

RECITALS

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

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

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

AGREEMENT

1. Grant of License. Latham hereby grants to Licensee a two (2) year license, beginning April 1, 2021, for the use of Latham's existing capacity in the Bypass Structures, subject to the terms and conditions of this License Agreement. The Licensee shall be entitled to utilize a maximum of **5.0 cfs** of Latham's existing Bypass Structures ("Flow Allocation") to run the volume of **600 acre-feet** ("Volume Allocation") through the Bypass Structures during the term of this License Agreement, subject to the terms and conditions of this License Agreement. Latham agrees within six (6) months from the termination of the two (2) year License Agreement to negotiate renewal of this License Agreement with Licensee.
2. Application and Structure Use Fees. In consideration for the License granted herein, Licensee shall pay to Latham an annual payment of **\$7,800.00**. This fee consists of an Application and Administration Fee of \$500 and a Structure Use fee of \$7,300.00. The Structure Use Fee is calculated by adding the Flow Allocation Fee (\$500.00 per cfs) with the Volume Allocation Fee (\$8.00 per acre foot). Accordingly, Licensee shall be entitled to use the Flow Allocation to run up to (600.0) acre-feet during each year in accordance with the terms of this License Agreement. Until such fees are paid Licensee shall have no right to utilize Licensee's Allocation or Volume Allocation or otherwise use the Structure. If Licensee determines that it needs to run more than its Flow Allocation or Volume Allocation through the Bypass Structures during the term of this License, then Latham agrees to negotiate in good faith with Licensee to allow it a reasonable increase in said allocation, if capacity is available in the Bypass Structures.
3. Payment. The annual Application Fee and the Structure Use Fee set forth in paragraph 2 is due and payable by Licensee to Latham upon the execution of this Agreement. Licensee shall not exceed the Flow Allocation at any time. If Licensee exceeds the Volume Allocation, Licensee shall pay Latham a "penalty" fee of twice the Volume Allocation Fee

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

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

[remainder of page intentionally left blank]

City of Greeley

By: _____

Name: _____

As:

Lower Latham Ditch Company

By: _____

Name: James Park

As: President

Lower Latham Bypass Agreement

Presented by Alex Tennant
Water Resources Analyst

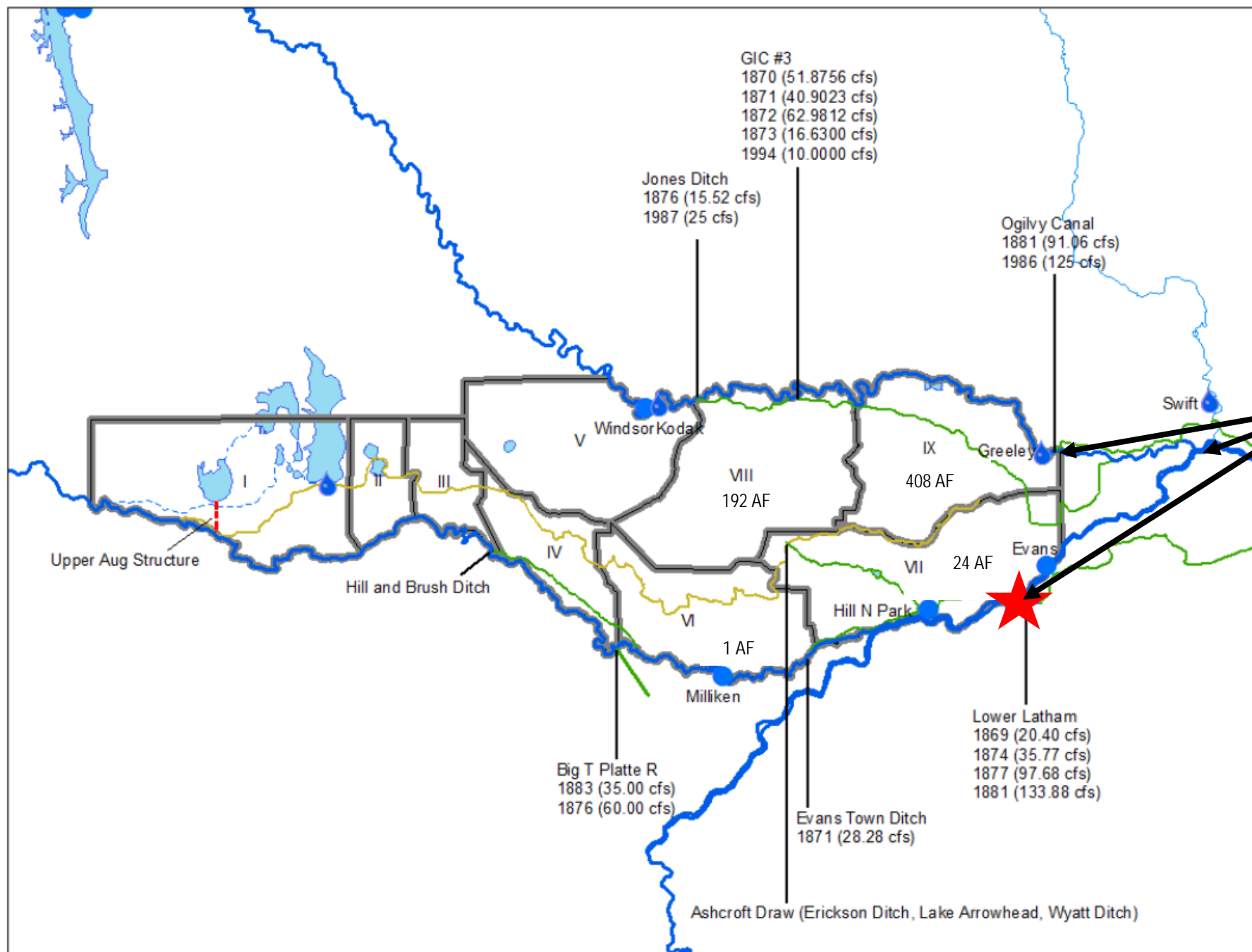
April 21, 2021



Background

- Lower Latham is a senior ditch on the South Platte between the confluence with the Big Thompson and Poudre Rivers
- Can call for water April through September
 - Notification from the State that the call could come on before run-off
 - Will likely call July through September
- When calling, Greeley cannot release water from the GLIC system to meet return flow obligations (RFO's) on the South Platte below the confluence with the Poudre
- Bypass agreement is required to receive credit for GLIC releases





Terms

- Two year license to use the bypass structure (April 2021 through April 2022)
- 5 cfs capacity, total of 600 acre-feet (total capacity is 200 cfs)
- Upfront payment of \$7,800
 - \$500 per cfs
 - \$8 per acre-foot
 - No refunds
- License provides right to use structure if there is excess capacity
- No conveyance of real property
- Indemnification clause (not enforceable)



Recommendation

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



Questions



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 6

TITLE: ADOPT JOINT RESOLUTION TERMINATING
THE INDUSTRIAL WATER BANK

RECOMMENDATION: ADOPT JOINT CITY COUNCIL AND WATER
AND SEWER BOARD RESOLUTION
TERMINATING THE INDUSTRIAL WATER
BANK

ADDITIONAL INFORMATION:

The Industrial Water Bank (IWB) was created in 1998 to utilize raw water sources that Greeley had acquired at competitive prices to attract job creating industries. While the IWB was not used often, it was instrumental in attracting Leprino to build its cheese producing facility in Greeley.

With the closing of the Terry Ranch master agreement now complete, the IWB needs to be ended. In order to not devalue the Raw Water Credits associated with Terry Ranch, the agreement sets a minimum price for cash-in-lieu prices that is incompatible with future industrial customers paying IWB raw water prices. This joint City Council and Water and Sewer Board resolution will dissolve the IWB in order to be consistent with the conditions within the Terry Ranch master agreement.

**THE CITY OF GREELEY, COLORADO
CITY COUNCIL AND WATER AND SEWER BOARD**

JOINT RESOLUTION ___, 2021

**A JOINT RESOLUTION OF THE CITY OF GREELEY CITY COUNCIL AND WATER AND SEWER
BOARD DISSOLVING THE INDUSTRIAL WATER BANK**

WHEREAS, the City Council and Water and Sewer Board established by Joint Resolution 52, 1998 a water bank to purchase, acquire, hold, and sell water to selected industrial users for that water not required by the City of Greeley to meet its existing level of drought protection ("Industrial Water Bank"); and

WHEREAS, the City Council and Water and Sewer Board subsequently clarified the availability of water held in the Industrial Water Bank via the adoption of Joint Resolution 63, 2007, amending Joint Resolution 52, 1998; and

WHEREAS, the Water and Sewer Board subsequently adjusted the balance of water to be held in the Industrial Water Bank via the adoption of Resolution 11, 2007, Resolution 1, 2011, and Resolution 3, 2017; and

WHEREAS, the City Council and Water and Sewer Board have determined that the Industrial Water Bank is no longer necessary to meet the general objectives originally set forth in Joint Resolution 52, 1998;

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

Section 1. Joint Resolution 52, 1998, Joint Resolution 63, 2007, Resolution 11, 2007, Resolution 1, 2011, and Resolution 3, 2017 are hereby rescinded in their entireties.

Section 2. The Director of Water and Sewer, or his designee, shall dissolve the Industrial Water Bank and the separate account in which Industrial Water Bank water supplies have been held distinct from the remainder of the City's water supply portfolio.

Section 3. Any existing contractual rights associated with Industrial Water Bank water supplies previously granted by the City pursuant to a binding agreement with an identified water user shall be deemed vested and unaffected by this dissolution of the Industrial Water Bank. Nothing in this Joint Resolution is intended to amend the terms of any such agreement, or associated obligations of the City thereunder.

Section 4. The Director of Water and Sewer, and his designee, are further authorized and directed to undertake any and all other necessary action to dissolve the Industrial Water Bank.

Section 5. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS _____ DAY OF _____ 2021.

ATTEST:

THE CITY OF GREELEY, COLORADO

City Clerk

Mayor

ATTEST:

WATER AND SEWER BOARD

Secretary

Chairman

Industrial Water Bank Termination

Water & Sewer Board | April 21, 2021



Background

- Industrial Water Bank created by Greeley City Council and Water Board Joint Resolution 52, 1998
- Set a water bank with a minimum balance of 500 acre feet
 - Minimum balance requirement evolved over time with subsequent resolutions
 - Managed as a separate supply from the rest of the City's water supply
- To be used to assist selected industrial users by providing competitively priced raw water



Industrial Water Bank Usage

- Customers who used Water Bank water
 - Leprino (~95% of allocated water)
 - Noble
 - State Farm
- Volume of Water Bank water unallocated ~ 800 acre feet



Need to Terminate

- Incompatible with the Terry Ranch agreement
 - Section 10.5.B states that Greeley's cash-in-lieu price must be at least \$30,000/acre foot in any year before December 31, 2099 or the date that Wingfoot transfers and assigns its last Raw Water Credit to a third party
 - Greeley would have to pay liquidated damages if cash-in-lieu was less than \$30,000/acre foot



Greeley's Raw Water Advantages

- Incentive priced raw water no longer needed
- Greeley has a water portfolio available for development
 - Some providers in the region are requiring wet water supplies
 - Requires developers to pay market prices
- Terry Ranch raw water credits
 - Priced at an amount lower than Greeley's cash-in-lieu, which is already lower than other Northern Colorado water providers



Recommendation

- Adopt a Joint City Council and Water and Sewer Board Resolution terminating the Industrial Water Bank



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 7

TITLE: APPROVE AND RECOMMEND TO COUNCIL
THE BALMER FARM EASEMENT
DIVESTMENT

RECOMMENDATION: APPROVE AND RECOMMEND CITY
COUNCIL APPROVE THE BALMER FARM
EASEMENT DIVESTMENT

ADDITIONAL INFORMATION:

The City owns a property located in Weld County known as the Balmer Farm, which was purchased by the Water and Sewer Department for certain water rights attached to the farm. The property is currently leased for farming operations.

In February of 2021, the City received a request for an easement on the Balmer Farm from the Public Service Company of Colorado (“PSCo”). The proposed easement is for an above ground power line and would be along the Northern border of the property, taking up approximately 11.56 acres. Impacts to the farming operation would be minimal and have been reviewed with and by the City’s tenant farmer. PSCo has agreed to address any damages to city property, complete land and vegetation restoration in the disturbed areas, and compensate the tenant farmer for any crop losses. PSCo will pay \$28,900 for an option agreement, which expires February 5, 2022, and then another \$260,100 for the easement purchase price. The total proposed offer amount of \$289,000 was found to be in alignment with recent available valuation data.

Staff recommends approval of the Balmer Farm easement divestment.

After recording, return to:
Public Service Company of Colorado
Siting and Land Rights
1800 Larimer Street, 4th Floor
Denver, CO 80202
Attn: Manager

PSCO DOC. NO. _____
ROW AGENT: David W. Allen

OPTION AGREEMENT FOR EASEMENT (“Option Agreement”)

The undersigned, **City of Greeley**, whose address is 1000 10th Street, Greeley, Colorado 80631, herein called “**Grantor(s)**”, for and on behalf of Grantor and Grantor’s heirs, successors and assigns, in consideration of the payment of the Option Price and other good and valuable consideration, the adequacy of which is hereby acknowledged, does hereby grant to Public Service Company of Colorado, a Colorado corporation, herein called “**Company**”, the sole and exclusive right and option (the “**Option**”) to purchase an easement for the construction, operation, and maintenance of an electric transmission line, as further described below, said easement to be substantially in the form attached hereto as Exhibit B (the “**Easement**”), on the following terms and conditions:

TERMS OF OPTION

1. Grant of Option; Option Consideration; Terms and Option. Grantor hereby grants to Company the Option, from the date of signature until **February 5, 2022** (the “**Option Term**”). No later than thirty (30) business days after Grantor executes and delivers this Option Agreement, the Company shall pay to Grantor the Option Price, as set forth in Exhibit C, which Exhibit C may be removed prior to recording. The Option Price shall be non-refundable to the Company.

This Option is for an easement approximately one hundred and fifty (150) feet in width for an electric transmission line and related purposes on, over, under and across the real property owned by Grantor and located in Weld County, Colorado, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”) in accordance with the terms and conditions set forth in the Electric Transmission Line Easement attached hereto as Exhibit B (the “**Easement**”). The location of the Easement shall be determined by Company at the time the Option is exercised.

2. Exercise of Option; Easement Consideration. The Company may exercise this Option any time during the Option Term by written notice to Grantor (the “**Notice**”), which notice shall include a description of the location of the Easement (the “**Easement Area**”). Following such notice, Grantor shall, within thirty (30) days after the Company’s exercise of the Option, execute and deliver to the Company the Easement Agreement in the form of Exhibit B, free and clear of all monetary liens and encumbrances covering the interests described therein, but otherwise subject to all matters of public record. Within thirty (30) business days after Grantor delivers the executed Easement Agreement, the Company shall pay to Grantor the Easement Purchase Price set forth in Exhibit C.
3. Right of Entry. During the Option Term and prior to the Notice of exercise of this Option, Company, its employees, agents, contractors and representatives shall have the right and license to enter upon the Property for the purpose of doing all those things which the Company deems

necessary to study, survey, inspect, test and plan for the Company's proposed use of the Property, including but not limited to, soil borings, conducting a hazardous substances investigation and conducting a feasibility study which may cover such subjects as soil conditions, geological tests, engineering reports, topographic studies, flood protection, environmental impact reports, zoning and planning regulations, and any other tests and studies which the Company may elect to perform on the Property, all at the sole cost and expense of the Company.

4. Damage. In the event entry upon the Property by the Company pursuant to paragraph 3 hereof causes any damage to the Property, including to road improvements and fences from time to time existing thereon, the Company shall, at its option, either restore such damaged portion of the Property to substantially the same condition as existed prior to entry by the Company, or compensate Grantor for the damage.
5. Encumbrances and Leases. During the Option Term, Grantor will not sell, contract to sell, assign, lease, or otherwise transfer or encumber the Property, except subject to the Company's rights under this Option Agreement. In no event during the Term, will Grantor grant a license, easement, option, leasehold, or other right to the Property which could interfere with the rights of the Company under this Option Agreement or the Easement Agreement.
6. Cooperation. Grantor shall assist and cooperate with Company, in complying with or obtaining any land use permits, approvals or similar requirements Company deems necessary or desirable to install and operate facilities under the Easement Agreement, pursuant to any governmental, quasi-governmental or private requirements, covenants or restrictions. Grantor's cooperation includes the execution of applications and other necessary documentation, and appearance at community meetings and/or public hearings at the request of Company to voice support for any application at issue. Grantor grants Company the right to act as Grantor's agent in making applications for permits or approvals in Grantor's name in those instances where only the owner of record of the Property can apply for the same. Grantor's assistance and cooperation under this paragraph will be without charge to the Company, provided Grantor will not be obligated to incur any out-of-pocket costs in connection therewith.
7. Default. If Grantor fails to execute and deliver the Easement Agreement following exercise of the Option by the Company, Grantor will be in default, and in addition to any other remedy available to Company, Grantor will be liable to Company for attorney fees and costs incurred by the Company in enforcing this Option Agreement.
8. Recording of Option. Grantor will not file or record this Option Agreement in the Clerk and Recorder's office of the County in which the Property is located or any other public records (collectively "**Official Records**"). This Option Agreement may be recorded by the Company in the Official Records, it being agreed that the Company may remove Exhibit C from the Option Agreement prior to recording. Although removed, Exhibit "C" shall remain part of this Option Agreement and such removal shall not affect the validity hereof. In the event the Option is exercised, Company shall have the right to record a Notice of Exercise of Option in the Official Records stating that the Option has been exercised and including the terms of the Easement Agreement.
9. Notices. All notices, demands and requests required or permitted to be delivered under this Option Agreement (collectively "**Notices**") to a party pursuant to this Option Agreement must be in writing and shall be sent by United States certified mail, prepaid, return receipt requested;

personal delivery; or overnight courier service. For purposes of giving Notices hereunder, the addresses of the parties, until changed as hereinafter provided, are the following:

Grantor(s):

City of Greeley
Lindsay Kuntz
1000 10th Street
Greeley, Colorado 80631

Company:

Public Service Company of Colorado
1800 Larimer Street, 4th Floor
Denver, CO 80202
Attn: Manager, Siting and Land Rights

Notices shall be deemed to have been given (a) on the date personally delivered to the party intended, (b) the third business day after being sent by United States certified mail, prepaid, return receipt requested, or (c) the next business day after being sent by overnight courier.

10. Binding Effect and Covenants of Grantor. This Option Agreement shall be binding upon and inure to the benefit of the respective assignees, heirs, successors, and legal representatives of each party. Grantor represents and warrants to the Company that Grantor is the sole owner of the Property and has the unrestricted right and authority to execute this Option Agreement and to grant to the Company the rights granted hereunder, subject to no liens or encumbrances except as disclosed in writing to the Company prior to the execution of this Option Agreement.
11. Cancellation. Company shall have the right to cancel this Option at any time by providing written Notice to Grantor. In the event this Option is cancelled, Company shall record a notice of such termination in the real estate records of Weld County, Colorado if the Company has previously recorded a copy of this Agreement.
12. Miscellaneous. The Option and all rights, title and privileges herein granted shall be assignable by the Company in whole or in part; the provisions of this Option Agreement shall run with, be binding on and burden the Property and shall be binding on and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of Grantor and Company. "Grantor" shall include the singular, plural, feminine, masculine, and neuter. The title of this document and paragraph headings are inserted for convenience only and do not define or limit the rights granted pursuant to this Option Agreement.
13. Time Calculation. In computing any period of time described in this Option Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. As used herein, the term "**Business Day**" means any day that is not a Saturday, Sunday, or legal holiday for national banks in Denver, Colorado.
14. Modification. No change or modification of this Option Agreement shall be valid unless it is in writing and signed by Grantor and an authorized representative of the Company. This Option Agreement may be executed in counterparts, each of which shall be deemed an original, and which together will constitute one instrument.

IN WITNESS WHEREOF, each of the parties hereto has executed this instrument.

THE CITY OF GREELEY, COLORADO

a Colorado home rule municipal corporation

ATTEST:

By: _____
Mayor

By: _____
City Clerk

APPROVED AS TO SUBSTANCE:

By: _____
City Manager

By: _____
Chairman, Water and Sewer Board

APPROVED AS TO LEGAL FORM:

APPROVED AS TO AVAILABILITY OF
FUNDS:

By: _____
City Attorney

By: _____
Director of Finance

Date: _____

STATE OF COLORADO)
)
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____,
2021, by _____ as _____ for the City of
Greeley, Colorado.

Witness my hand and seal:

My commission expires: _____

Notary Public

Company:

Public Service Company of Colorado, a Colorado corporation

By: _____

Name: _____

Its: _____

Date: _____

STATE OF COLORADO)

)

COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____ as _____ of Public Service Company of Colorado, a Colorado corporation.

Witness my hand and seal.

My commission expires: _____

Notary Public

EXHIBIT A
THE PROPERTY

(See attached)

EXHIBIT "A"

NE1/4 SECTION 4
T7N, R66W, 6TH P.M.

PARCEL 'A'
TRANSMISSION LINE EASEMENT
AREA=2,628 S.F.±
OR 0.06 ACRES±

LOT B
RECORDED EXEMPTION NO.
0707-04-01-RECX16-0009
OWNER
CITY OF THORNTON

50' COLORADO
INTERSTATE GAS CO.,
ESMT REC.
NO. 2852196

E1/4 COR.
SEC. 4
FOUND 2.50"
ALUM. CAP
L.S. #25619

E. LINE SE1/4 SEC. 4
S01°32'42"W 2572.20'

C.R. 31 (60' R/W)

SE COR. SEC. 4
FOUND 3.25"
ALUM. CAP L.S.
#38213

OWNER
PUBLIC SERVICE CO.
OF COLORADO
REC. NO. 1554651

C.R. 84 (60' R/W)

SE1/4 SECTION 4
T7N, R66W, 6TH P.M.

PARCEL 'B'
TRANSMISSION
LINE EASEMENT
AREA=500,837 S.F.±
OR 11.50 ACRES±

OWNER
CITY OF GREELEY

LOT B
RECORDED EXEMPTION NO. 0707-4-4-RE-582
RECEPTION NO. 01919108

N. LINE SE1/4 SEC. 4
BASIS OF BEARING
N88°44'49"E 2657.17'

C1/4 COR. SEC. 4
FOUND 3.25" ALUM.
CAP L.S. #38480

N49°27'35"E
827.48' (TIE)

POINT OF
BEGINNING
PARCEL 'A'

N03°52'10"E
582.63' (TIE)

NW1/4 SECTION 4
T7N, R66W, 6TH P.M.

POINT OF
BEGINNING
PARCEL 'B'

N01°47'58"E 2568.46'
W. LINE SE1/4 SEC. 4

500 0 250 500
1 inch = 500 ft.

SW1/4 SECTION 4
T7N, R66W, 6TH P.M.

S1/4 COR. SEC. 4
FOUND 3.25" ALUM.
CAP L.S. #38213

S. LINE SE1/4 SEC. 4
S80°50'22"W 2668.39'

- 1.) PARCEL OWNERSHIP IS BASED ON THE RECORDS OF THE COUNTY ASSESSOR.
- 2.) ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS AFTER THE DATE OF THE CERTIFICATION SHOWN HEREON.
- 3.) THE ONLY PURPOSE OF THIS EXHIBIT IS TO SHOW THE LOCATION OF THE EASEMENT(S).
- 4.) THIS DOCUMENT SHALL BE CONSIDERED NULL AND VOID IF IT DOES NOT BEAR THE ORIGINAL SIGNATURE AND SEAL OF THE PROFESSIONAL LAND SURVEYOR OR IF ALTERED IN ANY WAY.



9025 E. Kenyon Ave., Suite 150, Denver, CO 80237
Tel:(303) 753-9799 Fax:(303) 753-4044

DRN. BY: J.L.

CHKD. BY: C.J.

DATE: 02/05/21

SCALE: 1" = 500'

FILE: R13090

SHEET: 1 OF 4

W/O #:

UTILITY EASEMENT

LINE/CURVE TABLES

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S60°48'57"E	47.84'
L2	N87°11'01"W	138.48'
L3	N40°41'54"E	31.72'
L4	S65°08'50"E	22.94'
L5	S58°33'46"E	82.27'
L6	S53°24'51"E	30.04'
L7	S41°58'33"E	2656.46'
L8	S01°32'42"W	931.49'
L9	N71°26'29"W	104.58'
L10	N01°32'42"E	788.37'
L11	N41°58'33"W	2773.51'

CURVE TABLE					
NO.	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	105.90'	78.00'	77°47'26"	N80°17'19"E	97.95'
C2	12.32'	222.00'	3°10'45"	N42°17'16"E	12.32'
C3	70.93'	227.20'	17°53'15"	N31°45'16"E	70.64'



9025 E. Kenyon Ave., Suite 150, Denver, CO 80237
Tel:(303) 753-9799 Fax:(303) 753-4044

DRN. BY: J.L.
CHKD. BY: C.J.
DATE: 02/05/21
SCALE: 1" = 500'

FILE: R13090
SHEET: 2 OF 4
W/O #:

UTILITY EASEMENT

LEGAL DESCRIPTION

TWO PARCELS OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 7 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, ALSO BEING A PORTION OF LOT B, RECORDED EXEMPTION NO. 0707-4-4-RE-582, FOUND AT RECEPTION NO. 01919108, FILED IN THE WELD COUNTY CLERK AND RECORDER'S OFFICE, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING OF THIS DESCRIPTION IS ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 4 AND ASSUMED TO BEAR N88°44'49"E A DISTANCE OF 2657.17 FEET FROM A 3.25" ALUMINUM CAP STAMPED L.S. #38480 FOUND AT THE CENTER QUARTER CORNER OF SAID SECTION 6 TO A 2.50" ALUMINUM CAP L.S. #25619 FOUND AT THE EAST QUARTER CORNER OF SAID SECTION 4;

PARCEL 'A'

BEGINNING AT A POINT WHICH BEARS N03°52'10"E A DISTANCE OF 582.63 FEET FROM SAID CENTER QUARTER CORNER OF SECTION 4;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT B THE FOLLOWING TWO COURSES:

- 1.) ALONG A NON-TANGENT CURVE TO THE RIGHT AN ARC LENGTH OF 105.90 FEET, HAVING A RADIUS OF 78.00 FEET, THROUGH A CENTRAL ANGLE OF 77°47'26" AND A CHORD WHICH BEARS N80°17'19"E A DISTANCE OF 97.95 FEET;
- 2.) THENCE S60°48'57"E A DISTANCE OF 47.84 FEET; THENCE N87°11'01"W A DISTANCE OF 138.48 FEET TO THE POINT OF BEGINNING; WHENCE SAID EAST QUARTER CORNER OF SECTION 4 BEARS S78°41'43"E A DISTANCE OF 2669.00 FEET.

PARCEL CONTAINS 2,628 SQUARE FEET OR 0.06 ACRES OF LAND, MORE OR LESS.

PARCEL 'B'

BEGINNING AT A POINT WHICH BEARS N49°27'35"E A DISTANCE OF 827.48 FEET FROM SAID CENTER QUARTER CORNER OF SECTION 4;

THENCE ALONG THE NORTHERLY AND NORTHEASTERLY SIDES OF SAID LOT B THE FOLLOWING SEVEN (7) COURSES:

- 1.) ALONG A CURVE TO THE LEFT AN ARC LENGTH OF 12.32 FEET, HAVING A RADIUS OF 222.00 FEET, THROUGH A CENTRAL ANGLE OF 03°10'45" AND A CHORD WHICH BEARS N42°17'16"E A DISTANCE OF 12.32 FEET;
- 2.) THENCE N40°41'54"E A DISTANCE OF 31.72 FEET;
- 3.) THENCE ALONG A CURVE TO THE LEFT AN ARC LENGTH OF 70.93 FEET, HAVING A RADIUS OF 227.20 FEET, THROUGH A CENTRAL ANGLE OF 17°53'15" AND A CHORD WHICH BEARS N31°45'16"E A DISTANCE OF 70.64 FEET;
- 4.) THENCE S65°08'50"E A DISTANCE OF 22.94 FEET;
- 5.) THENCE S58°33'46"E A DISTANCE OF 82.27 FEET;



9025 E. Kenyon Ave., Suite 150, Denver, CO 80237
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DRN. BY: J.L.

CHKD. BY: C.J.

DATE: 02/05/21

SCALE: 1" = 500'

FILE: R13090

SHEET: 3 OF 4

W/O #:

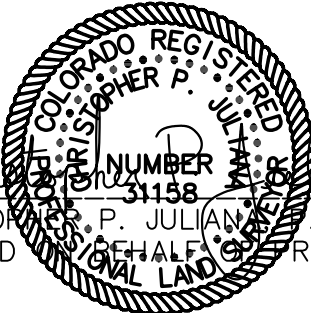
UTILITY EASEMENT

LEGAL DESCRIPTION

6.) THENCE S53°24'51"E A DISTANCE OF 30.04 FEET;
7.) THENCE S41°58'33"E A DISTANCE OF 2,656.46 FEET TO THE WESTERLY
RIGHT-OF-WAY OF COUNTY ROAD 31;
THENCE S01°32'42"W ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 931.49 FEET; THENCE
N71°26'29"W A DISTANCE OF 104.58 FEET; THENCE N01°32'42"E A DISTANCE OF 788.37
FEET; THENCE N41°58'33"W A DISTANCE OF 2,773.51 FEET TO THE POINT OF BEGINNING;
WHENCE SAID EAST QUARTER CORNER OF SECTION 4 BEARS S76°41'20"E A DISTANCE OF
2083.67 FEET.

PARCEL CONTAINS 500,837 SQUARE FEET OR 11.50 ACRES OF LAND, MORE OR LESS.

I, THE UNDERSIGNED, A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO
HEREBY STATE THAT THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY SUPERVISION
AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.


Christopher P. Julian 02/05/21
CHRISTOPHER P. JULIAN, L.S. 31158 DATE
FOR AND BEHALF OF PRECISION SURVEY & MAPPING, INC.



PRECISION SURVEY & MAPPING
PROFESSIONAL LAND SURVEYING CONSULTANTS

9025 E. Kenyon Ave., Suite 150, Denver, CO 80237
Tel:(303) 753-9799 Fax:(303) 753-4044

DRN. BY: J.L.
CHKD. BY: C.J.
DATE: 02/05/21
SCALE: 1" = 500'

FILE: R13090
SHEET: 4 OF 4
W/O #:

UTILITY EASEMENT

EXHIBIT B
THE EASEMENT

(See attached)

After recording, return to:
Public Service Company of Colorado
Siting and Land Rights
1800 Larimer Street, 4th Floor
Denver, CO 80202
Attn: Manager

PSCO DOC. NO: _____
ROW AGENT: David W. Allen

ELECTRIC TRANSMISSION LINE EASEMENT

The undersigned, **City of Greeley**, whose address is 1000 10th Street, Greeley, Colorado 80631 ("Grantors"), for good and valuable consideration the receipt and adequacy of which is acknowledged, hereby grants, sells, and conveys to PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, with an address of 1800 Larimer Street, Suite 400, Denver, Colorado 80202 (the "Company"), an electric transmission line easement more particularly described as follows:

A perpetual non-exclusive easement for the transmission and distribution of electricity and related communication signals on, over, under, and across the following described premises:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE (the "Easement Area"),

Together with the full right and authority in the Company and its agents, employees and contractors to enter the Easement Area at all times to: (1) survey, mark and sign the Easement Area or the Facilities (as defined below); (2) construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, patrol, inspect, improve, enlarge, and maintain electric transmission and distribution lines and related communication facilities, including towers, poles, and other supports; together with braces, guys, anchors, cross-arms, cables, conduits, wires, conductors, manholes, transformers, and other fixtures, devices, and appurtenances used or useful in connection therewith (collectively the "Facilities"); (3) cut, fell, prune or otherwise control, all trees, brush, and other vegetation on or overhanging the Easement Area; and (4) use the Easement Area for reasonable ingress and egress for personnel, equipment and vehicles.

No temporary or permanent wells, buildings, or structures (including without limitation mobile homes or trailers) shall be placed or permitted to remain on, under, or over the Easement Area by Grantor. No other objects shall be erected, placed, or permitted to remain on, under, or over the Easement Area by Grantor, including trees, shrubs and fences, that may interfere with the Facilities or interfere with the exercise of any of the rights granted pursuant to this Electric Transmission Line Easement (this "Easement").

Subject to the restrictions and limitations set forth herein, Grantor reserves the right to use the Easement Area for any purpose which does not interfere with or endanger the Facilities or interfere with the Company's use of the Easement Area as provided for herein. Grantor shall expressly have the right to cultivate crops within the Easement in any manner which does not interfere with Grantor's exercise of its rights granted in this Easement and to cross the Easement Area with roads and utilities, provided that such roads and utilities do not materially interfere with the rights granted to Company in this Easement.

Non-use or a limited use of the Easement Area shall not prevent the Company from thereafter making use of the Easement Area to the full extent authorized. Following completion of construction or renovation of its Facilities on the Easement Area, the Company shall restore the surface of the Easement Area to as near a condition as existed prior to such work as is reasonably practicable, taking into account, among other things, the existence of the Facilities and the restrictions stated herein, including prohibitions or limitations on structures, trees, shrubs, and other objects. Notwithstanding the foregoing, Company's failure to use the Easement for a period of three (3) consecutive years shall be deemed an abandonment of the Easement, and this Easement shall terminate except for those provisions which expressly survive termination. Non-use of the Easement shall not constitute abandonment if such non-use is a result of Acts of God (including fire, flood, earthquake, storm, or other natural disaster), war, invasion, act of foreign enemies, insurrection, acts of terrorism, rules or regulations promulgated by any governmental body, or any other event over which the Company has no control. Company's work in actively seeking regulatory approval or permits related to its Facilities will not be deemed abandonment.

No amendment, modification or supplement of this Easement shall be binding on the Company unless made in writing and executed by an authorized representative of the Company. No waiver by the Company of any provision hereof shall be deemed to have been made unless made in writing and signed by an authorized representative of the Company. No delay or omission in the exercise of any right or remedy accruing to the Company upon any breach shall impair such right or remedy or be construed as a waiver of any such breach or of a subsequent breach of the same or any other term, covenant or condition herein contained.

The provisions of this Easement shall run with the land and shall be binding on and burden the Easement Area and shall be binding upon and shall inure to the benefit of all persons claiming an interest in the Easement Area, or any portion thereof, through the parties hereto, including the heirs, executors, personal representatives, successors, and assigns of the parties. "Grantor" shall include the singular, plural, feminine, masculine and neuter.

Grantor represents that it has the right to grant the easement and rights contained herein. This grant is binding on Grantor, is not conditioned upon obtaining consent from any third parties, and is not subject to any mortgages or liens, except those for which Grantor has provided the Company with a consent and subordination agreement.

The Company shall indemnify and hold Grantor harmless from and against all claims, demands, causes of action and damages, including reasonable attorney's fees and litigation costs ("Claims"), arising out of Company negligence or willful misconduct in its exercise of its rights granted to Company under this Easement., Company shall have no duty to indemnify or hold Grantor harmless for and to the extent of Claims arising out of the negligence or willful misconduct of Grantor. The foregoing obligations shall survive termination of this Agreement.

This Easement incorporates all agreements between the parties as to the subject matter of this Easement and no prior representations or statements, verbal or written, shall modify or supplement the terms of this Easement. This Easement consists of the document entitled "Electric Transmission Line Easement" and an Exhibit containing a legal description and a sketch depicting the legal description if referenced above or attached hereto. No other exhibit, addendum, schedule, or other attachment (collectively "Addendum") is authorized by the Company, and no Addendum shall be effective and binding upon the Company unless executed by an authorized representative of the Company.

Notary Public

**EXHIBIT C
COMPENSATION**

[TO BE REMOVED PRIOR TO RECORDING]

This Exhibit C is a part of the Option Agreement between Company and Grantor, notwithstanding that it is to be detached from the Option Agreement prior to recording.

Company and Grantor(s) agree as follows:

1. The “**Option Price**” shall be a one-time payment in the amount of **\$28,900.00**, payable within thirty (30) business days following execution of the Option Agreement by Grantor.
2. The Option Price is exclusive of the “Easement Purchase Price.”
3. The “**Easement Purchase Price**” shall be a one-time payment in an amount equal to **\$25,000.00** per acre of the Easement Area (prorated for partial acres), based on the acreage set forth in the legal description prepared by Company and delivered to Grantor(s) at the time of the exercise of the Option, along with compensation for temporary use of pull pockets, as required by construction, in the amount of **\$260,100.00**.
4. Grantor agrees to keep the terms of this Exhibit C confidential, and not to disclose such terms to any third party except to the extent required by applicable law, or to the extent necessary to obtain legal or tax advice, or to a mortgagee or purchaser of the Property.
5. Grantor and Company have separately initialed the provisions contained in this Exhibit C in the spaces provided below.

City of Greeley

By: _____

Name: _____

Its: _____

Date: _____

Public Service Company of Colorado
A Colorado Corporation

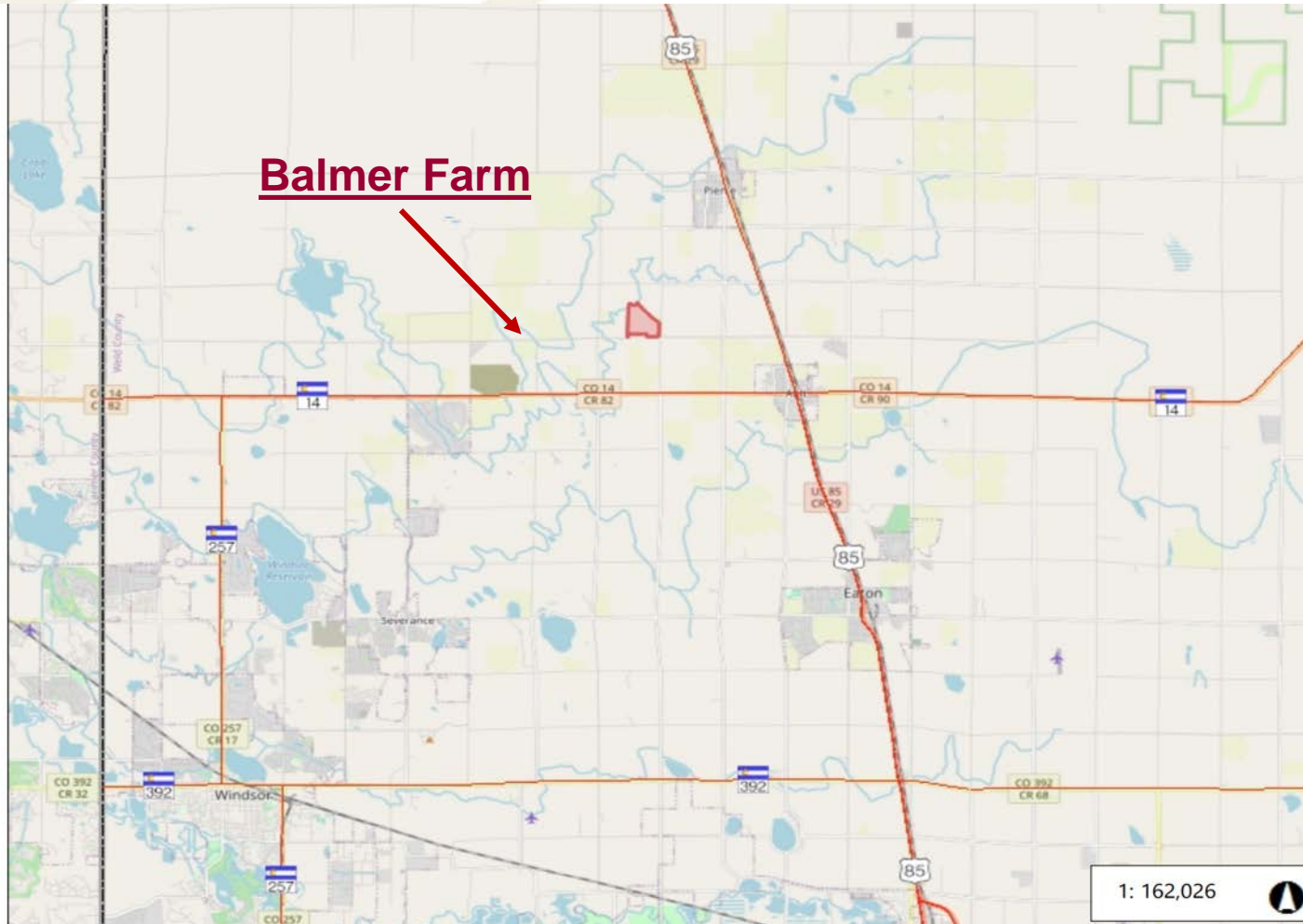
By: _____

Name: _____

Its: _____

Date: _____

Request for an Easement on Balmer Farm



April 21, 2021

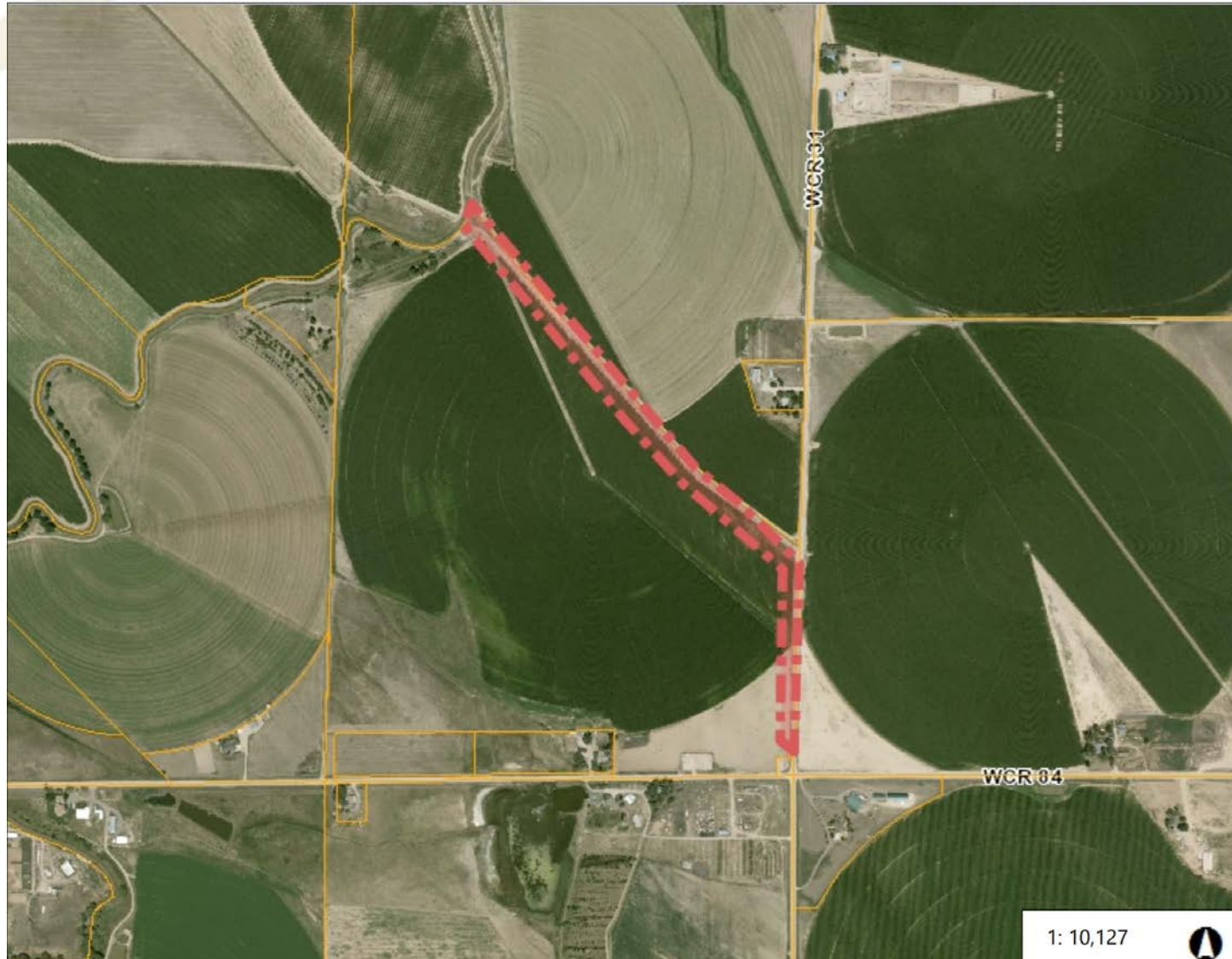


Balmer Farm Property Easement

- The easement request was submitted to Real Estate Management to run an above ground electric transmission line through the City of Greeley Property known as the Balmer Farm in early February.
 - Requester is an Electric Company - Public Service Company of Colorado
 - Easement would be along the northern board of the farm and cover approximately 11.56 acres and one hundred and fifty (150) feet in width
 - Minimal impact to irrigated land
 - Grantee will compensation for any damaged caused to land or crops



Balmer Farm Easement



Balmer Farm Easement

- Compensation
 - Option price: \$28,900
 - Easement purchase price: \$260,100
 - Total compensation: \$289,000
- Benefits:
 - W&S Dept. can seek to re-appropriate revenue that is received for granting the easement for additional investments in water rights



Recommended Action

Staff Recommends Approval of the Agreement for the Balmer Farm easement and divestment.





Questions?



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 8

TITLE: WELCOME NEW EMPLOYEES AND
 PROMOTIONS

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 9

TITLE: WATER SUPPLY UPDATE AND ADEQUACY
 DETERMINATION

RECOMMENDATION: FINDING OF ADEQUATE WATER YEAR AS
 OF APRIL 2021

ADDITIONAL INFORMATION:

Staff reports to the Water and Sewer Board (“Board”) in April, July, and November of each year on Greeley’s water supply status. In April, the Board makes a declaration concerning the adequacy of the Water Year. Based on projected storage, staff recommends that the Board declare an “Adequate Water Year,” with normal watering restrictions and authorize staff to rent out available excess water supply, so long as the target storage volume of 21,300 acre-feet is maintained.

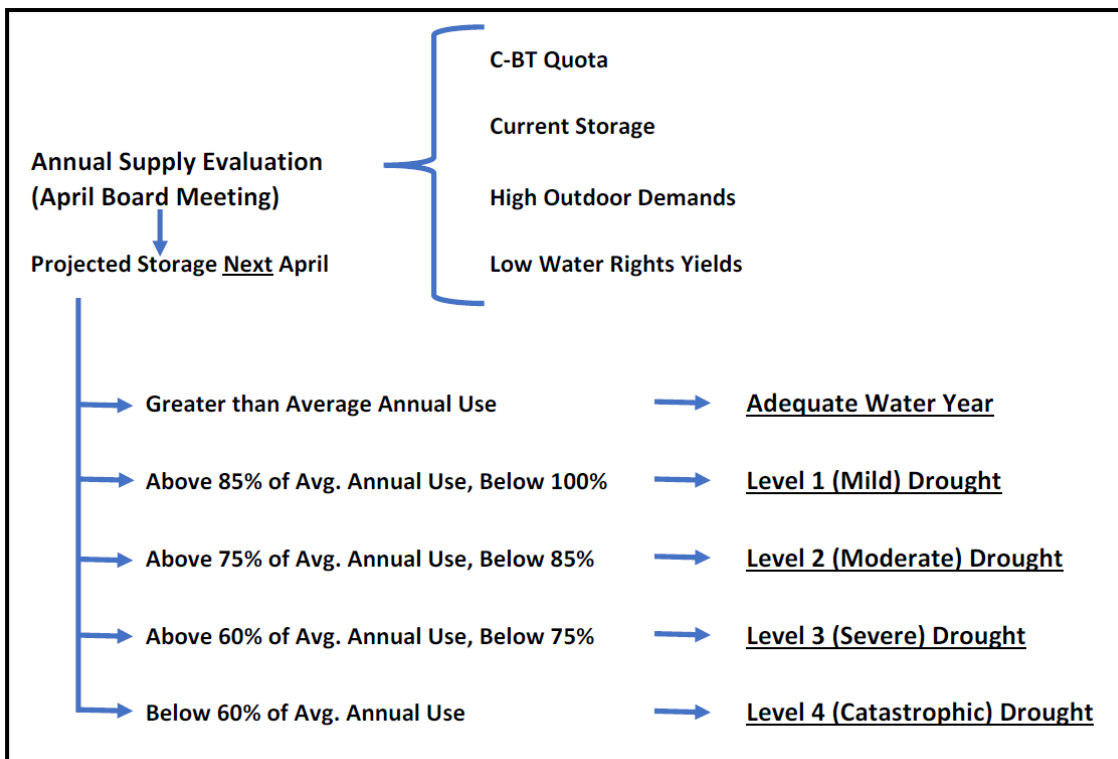


MEMORANDUM

TO: Sean Chambers, Water and Sewer Director
FROM: Jen Petrzelka, Water Resources Operations Manager
DATE: April 12, 2021
RE: April 2021 Water Supply Update

ISSUE

In accordance with the Drought Emergency Plan, staff will report the water supply status to the Greeley Water and Sewer Board ("Board") in April, July and November of each year. Previous modeling analysis has shown that the amount of water needed in storage to supply the citizens of Greeley for 12 months is approximately 21,300 acre-feet. When this target storage level is met, the Board can declare an "adequate water year" with normal watering restrictions. The following graphic illustrates the process for determining the projected target storage volume for April 2022.



BACKGROUND

The beginning of water year 2021 experienced below average snowpack levels until the March blizzard which brought levels close to 100% of average. Warm weather over the past couple of

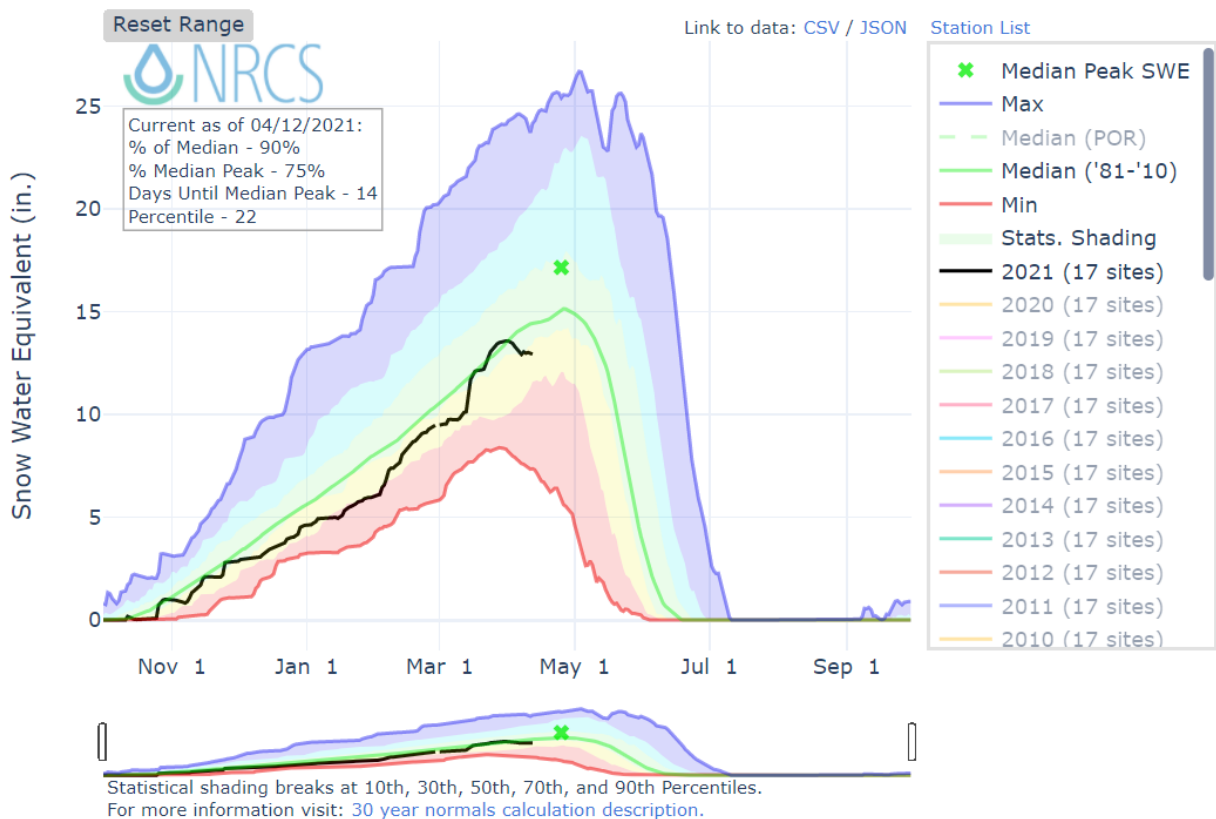
SERVING OUR COMMUNITY • IT'S A TRADITION

We promise to preserve and improve the quality of life for Greeley through timely, courteous and cost effective service.

weeks has melted some snow leaving the South Platte River basin at 88% of average and the Colorado River basin at 70% of average as of April 13. Water supply conditions are below normal as indicated by a Colorado SWSI¹ value of -2.3 for the South Platte basin, however reservoir storage in the South Platte basin is at 99% of average. The Upper Colorado River basin reservoir storage is at 98%. Streamflows are expected to be below average for the Cache la Poudre, Big Thompson and Colorado River basins at 88%, 89%, and 88% of average, respectively ('Northern Water Streamflow Forecasts').

In November 2020, the majority of the Colorado was in a severe to extreme drought. Conditions have improved slightly, however there are still large areas of moderate, severe, and exceptional drought. The 3 month temperature and precipitation forecasts show above average temperatures and below average precipitation indicating drought conditions will likely continue.

SNOW WATER EQUIVALENT IN SOUTH PLATTE



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

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The Greeley System Storage Analysis table for Water Year 2021 shows the April 2022 storage level will be approximately 26,778 acre-feet (table on following page). This is after collateralizing 4,100 acre-feet of C-BT for Windy Gap operations in the Northern system. Northern Water declared a 70% C-BT quota at its April Board meeting to satisfy demand for 2021. The WY2021 projections for the Greeley Loveland Irrigation system are based on dry year yields which is likely given the current streamflow predictions, current snowpack conditions, and water currently in storage. Additionally, 2,000 acre-feet of CBT was reserved to replace Poudre directs in anticipation that water quality from the fire will prevent treatment of directs approximately 50% of the irrigation season.

The April 2022 target storage volume relies on the following assumptions:

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

SERVING OUR COMMUNITY • IT'S A TRADITION

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Current Storage (acre-feet)	
CBT	18,835
Windy Gap	0
GLIC	16,355
HMR	1,365
Seaman	3,700
Total	40,254
Demands (April 1, 2021-April 1, 2022) (acre-feet)	
CBT	14,233
CBT carryover	6,127
Windy Gap (collateralized + pumped)	4,046
GLIC	8,304
Seaman	0
HMRs	500
Total	33,211
Yields through April 2022 (acre-feet)	
CBT (Nov. 2022-April 1, 2022)	11,406
Windy Gap	0
GLIC	8,329
HMRs	0
Total	19,735
April 2022 Storage	26,778
Target Storage Volume	21,300

RECOMMENDATION

The projection for the April 1, 2021 storage volume exceeds the target storage volume. Staff recommends the Board declare an adequate water year and that supplies be made available for immediate rental to agriculture while assuring target storage does not fall below 21,300 acre-feet.

SERVING OUR COMMUNITY • IT'S A TRADITION

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Water Supply Update

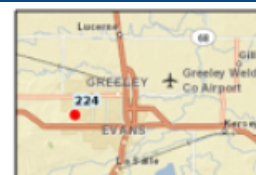
April 21, 2021

Water & Sewer Board

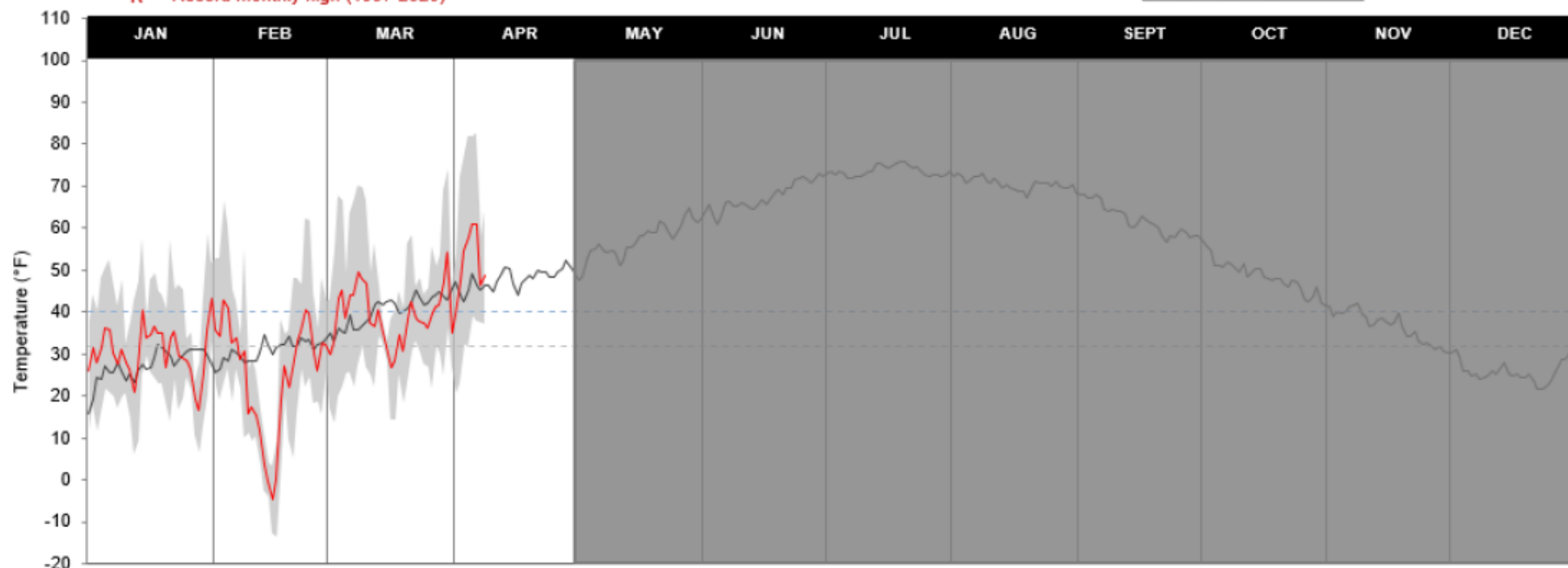


City of Greeley: Temperature (°F) and Precipitation 1997-2021

- 1997-2020 Average Temperature
- 2021 Average Daily Temperature
- 2021 Daily Temperature Range
- R Record monthly high (1997-2020)



Greeley West station (224)
Source: northernwater.org



MONTHLY AVERAGE TEMPERATURE (°F)

1997-2020	27.1	30.8	40.4	47.8	57.0	67.5	73.7	70.6	62.1	48.6	36.6	25.8
2021	30.5	25.1	39.1	52.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CUMULATIVE PRECIPITATION TO DATE (INCHES)

1997-2020	1.90
2021	2.49



SNOW WATER EQUIVALENT IN SOUTH PLATTE

Reset Range

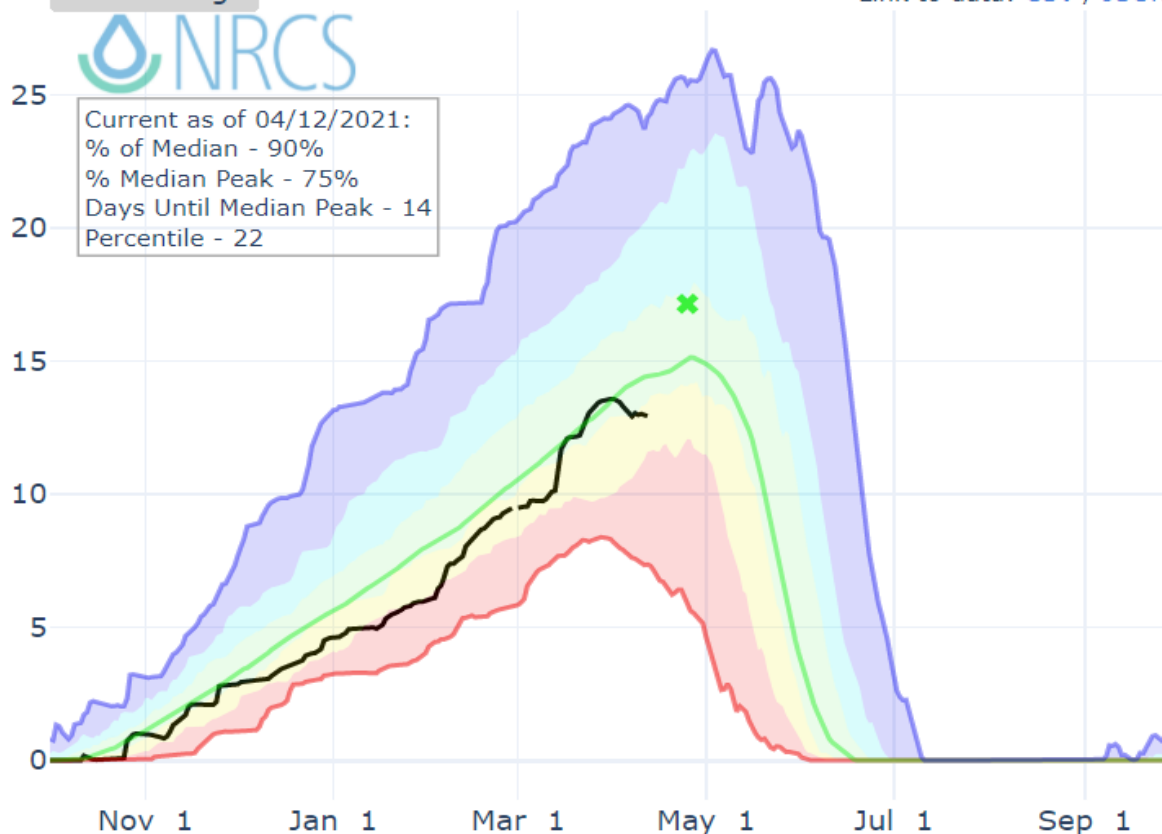
Link to data: [CSV](#) / [JSON](#)

[Station List](#)

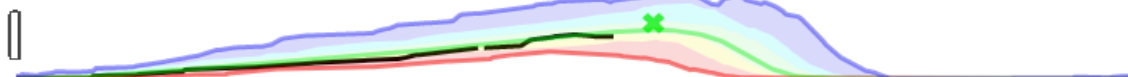


Current as of 04/12/2021:
% of Median - 90%
% Median Peak - 75%
Days Until Median Peak - 14
Percentile - 22

Snow Water Equivalent (in.)



- ✕ Median Peak SWE
- Max
- Median (POR)
- Median ('81-'10)
- Min
- Stats. Shading
- 2021 (17 sites)
- 2020 (17 sites)
- 2019 (17 sites)
- 2018 (17 sites)
- 2017 (17 sites)
- 2016 (17 sites)
- 2015 (17 sites)
- 2014 (17 sites)
- 2013 (17 sites)
- 2012 (17 sites)
- 2011 (17 sites)
- 2010 (17 sites)



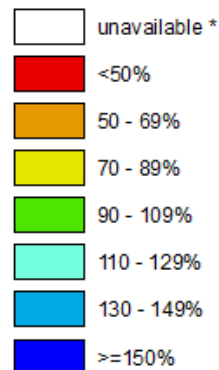
Statistical shading breaks at 10th, 30th, 50th, 70th, and 90th Percentiles.
For more information visit: [30 year normals calculation description](#).

Colorado SNOTEL Current Snow Water Equivalent (SWE) % of Normal

Apr 13, 2021

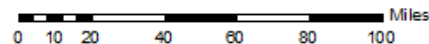
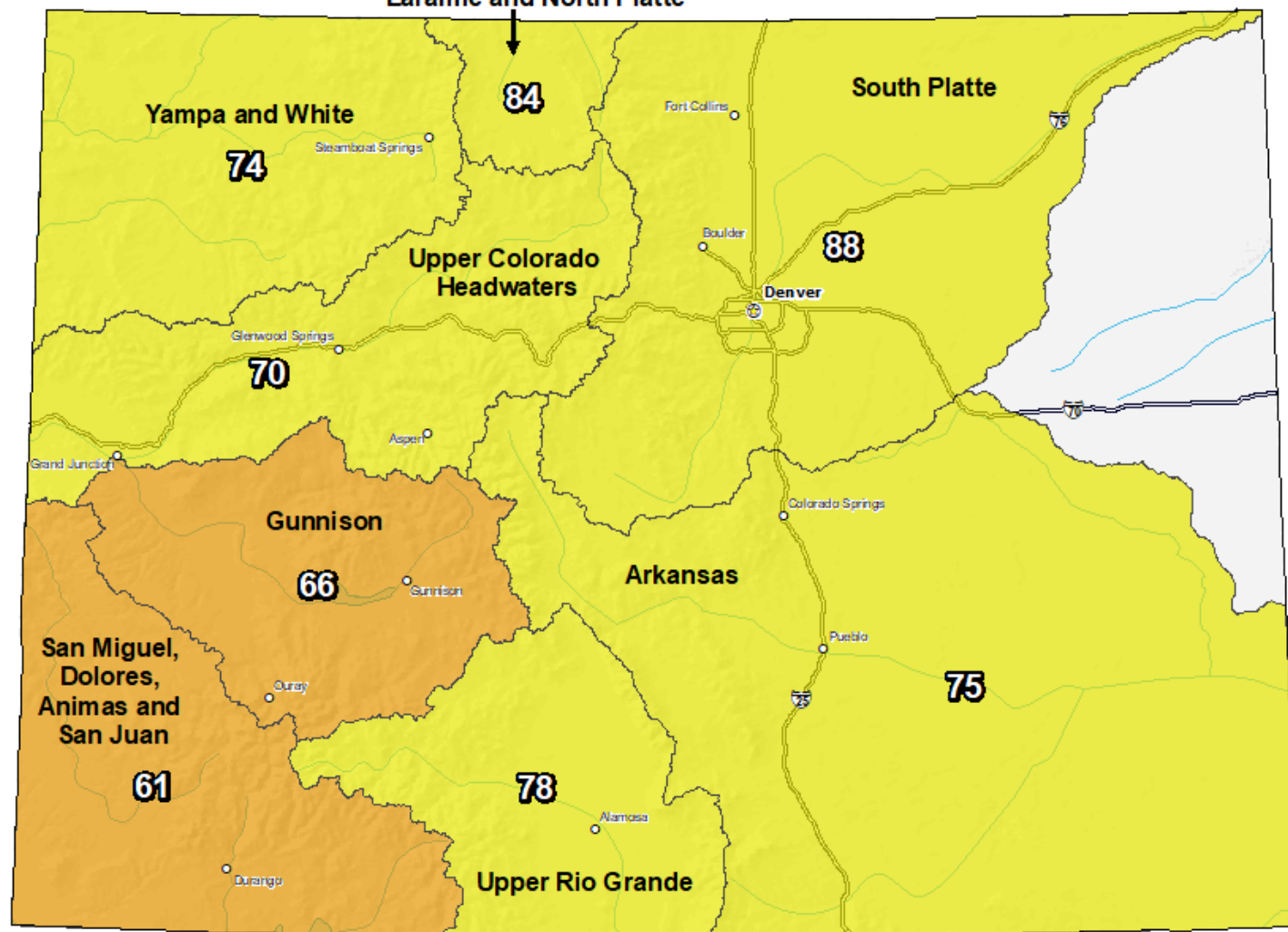
Laramie and North Platte

Current Snow Water
Equivalent (SWE)
Basin-wide Percent
of 1981-2010 Median



* Data unavailable at time
of posting or measurement
is not representative at this
time of year

*Provisional Data
Subject to Revision*



The snow water equivalent percent of normal represents the current snow water equivalent found at selected SNOTEL sites in or near the basin compared to the average value for those sites on this day. Data based on the first reading of the day (typically 00:00).

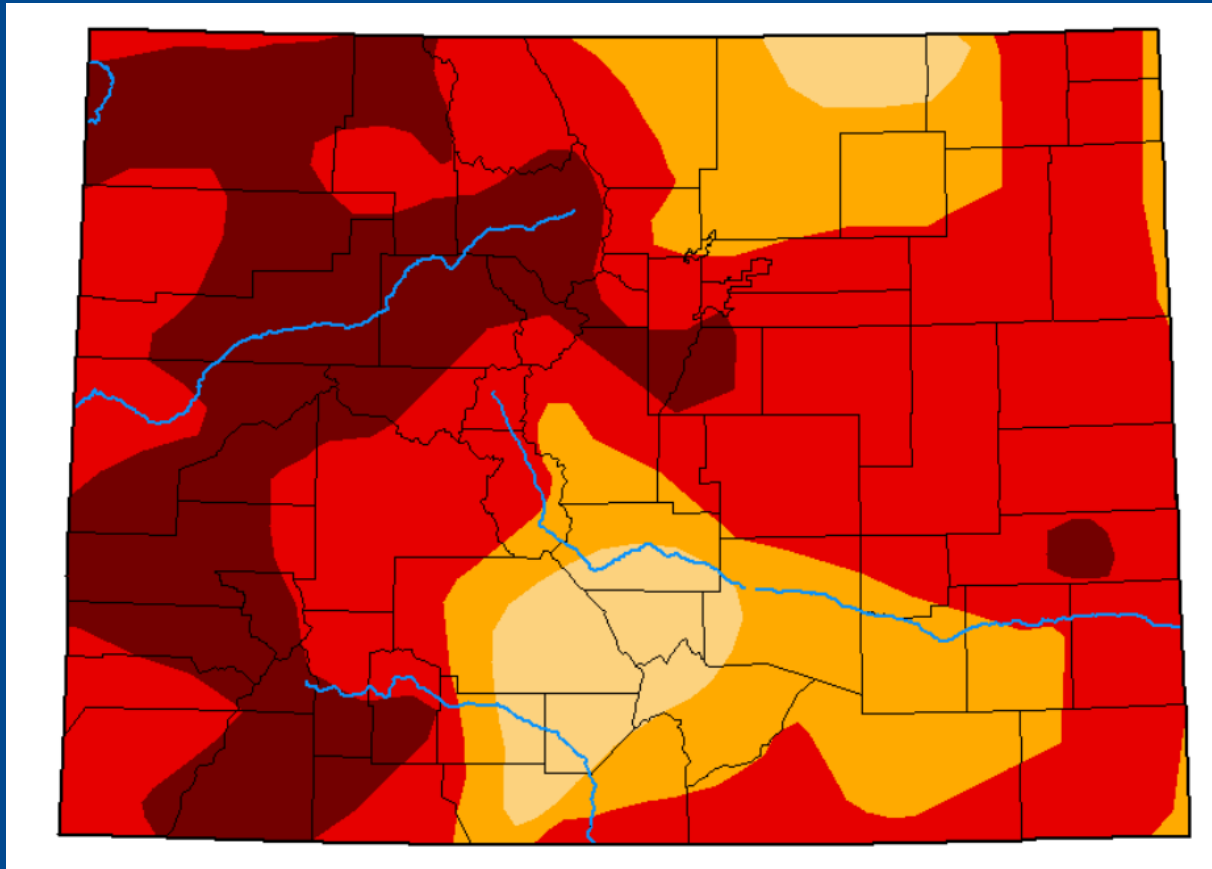
Prepared by:
USDA/NRCS National Water and Climate Center
Portland, Oregon
<http://www.wcc.nrcs.usda.gov>

Streamflow Forecasts

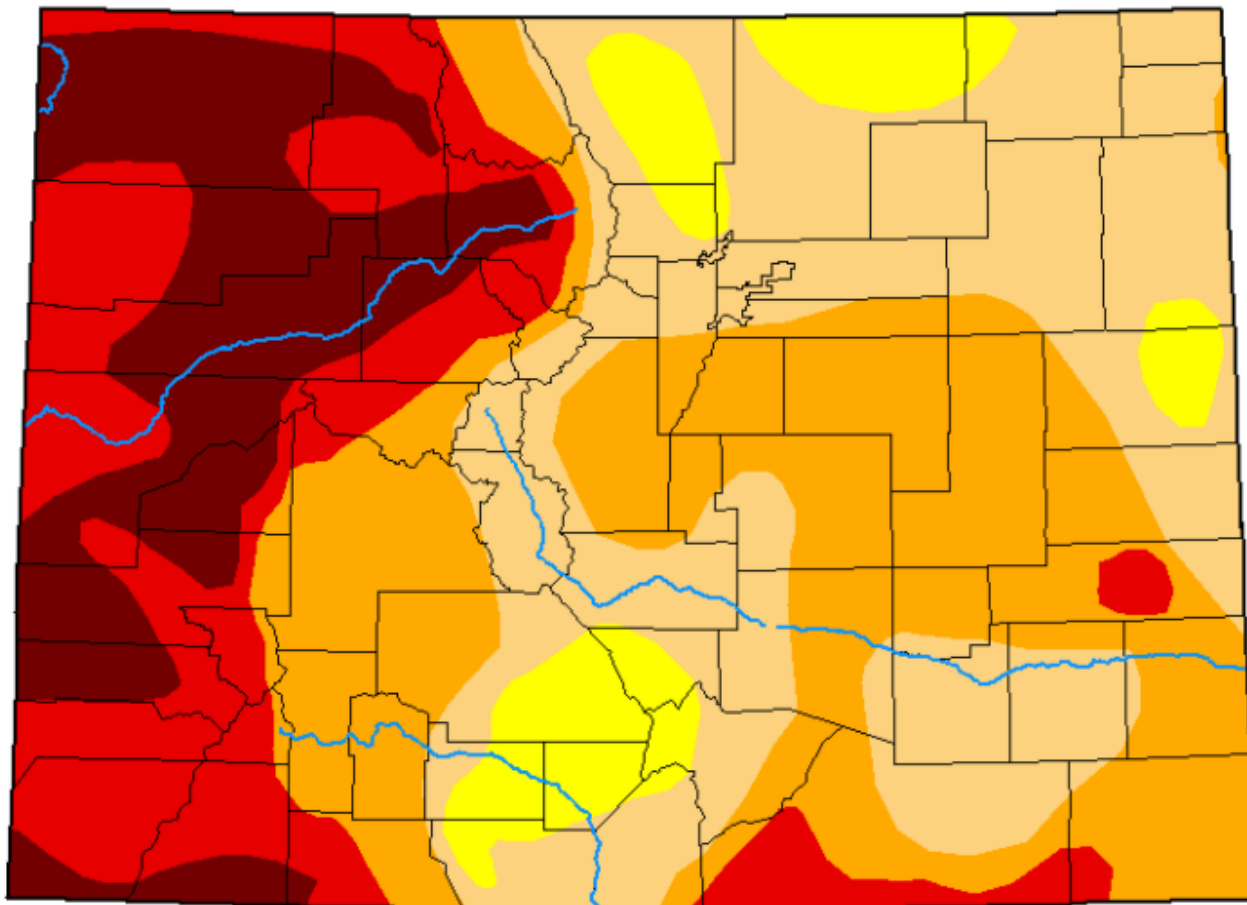
Apr-Jul Maximum, Minimum and Most Probable Streamflow Forecasts (1000 af)

Watershed	Forecast Minimum	Most Probable	Forecast Maximum	Apr-Jul Avg ⁽³⁾	Most Prob % Average
Blue River	128	191	253	275	69%
Upper Colorado River	133	167	228	220	76%
Willow Creek	15	31	61	47	66%
Fraser River	70	101	131	117	86%
Poudre River	120	199	279	225	88%
Big Thompson River	43	80	118	90	89%
St. Vrain River	44	77	110	88	88%
Boulder Creek	37	52	67	54	96%
South Platte Tributaries	--	408	--	457	89%

Drought Conditions November 2020



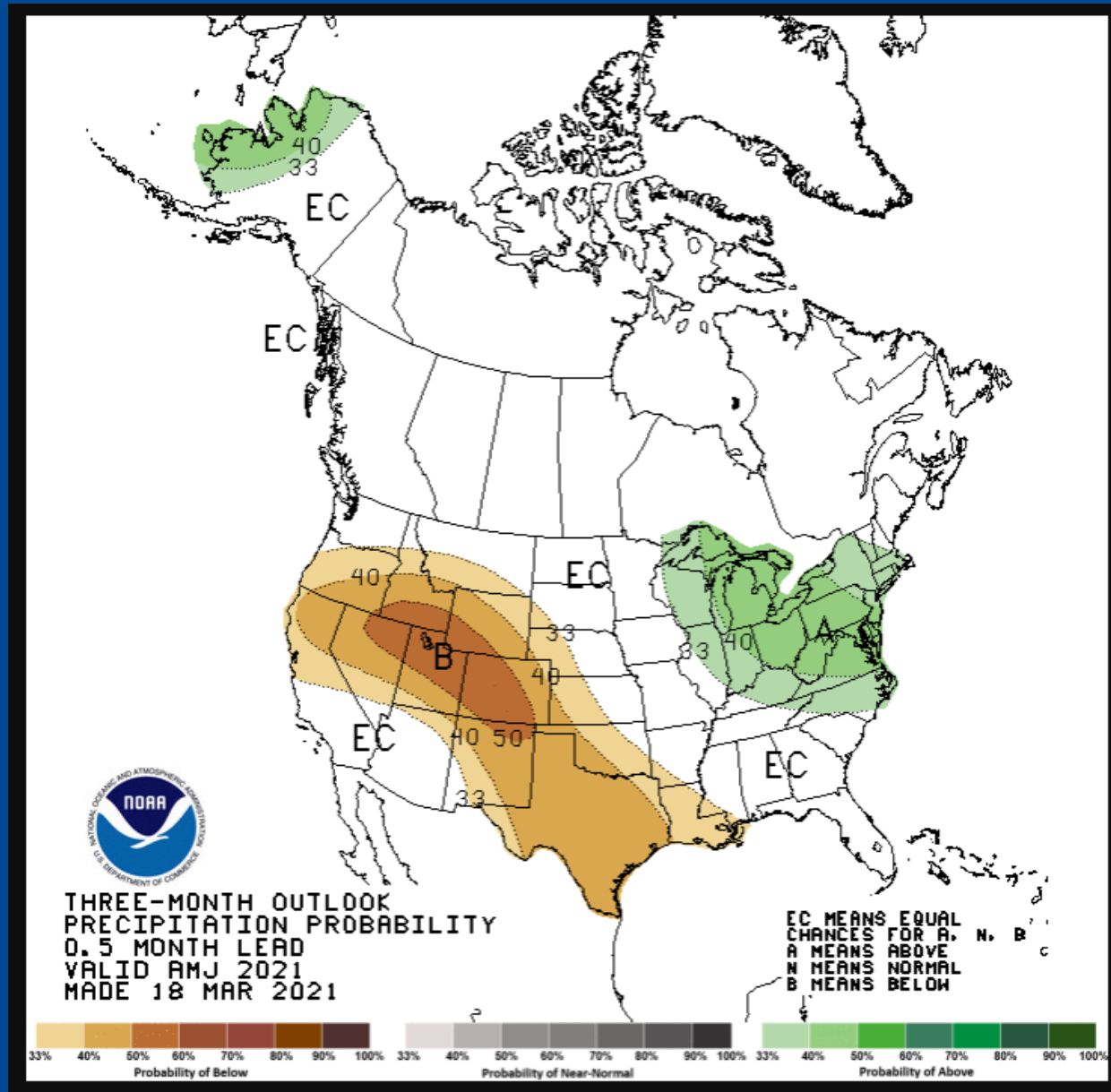
Drought Conditions April 2021



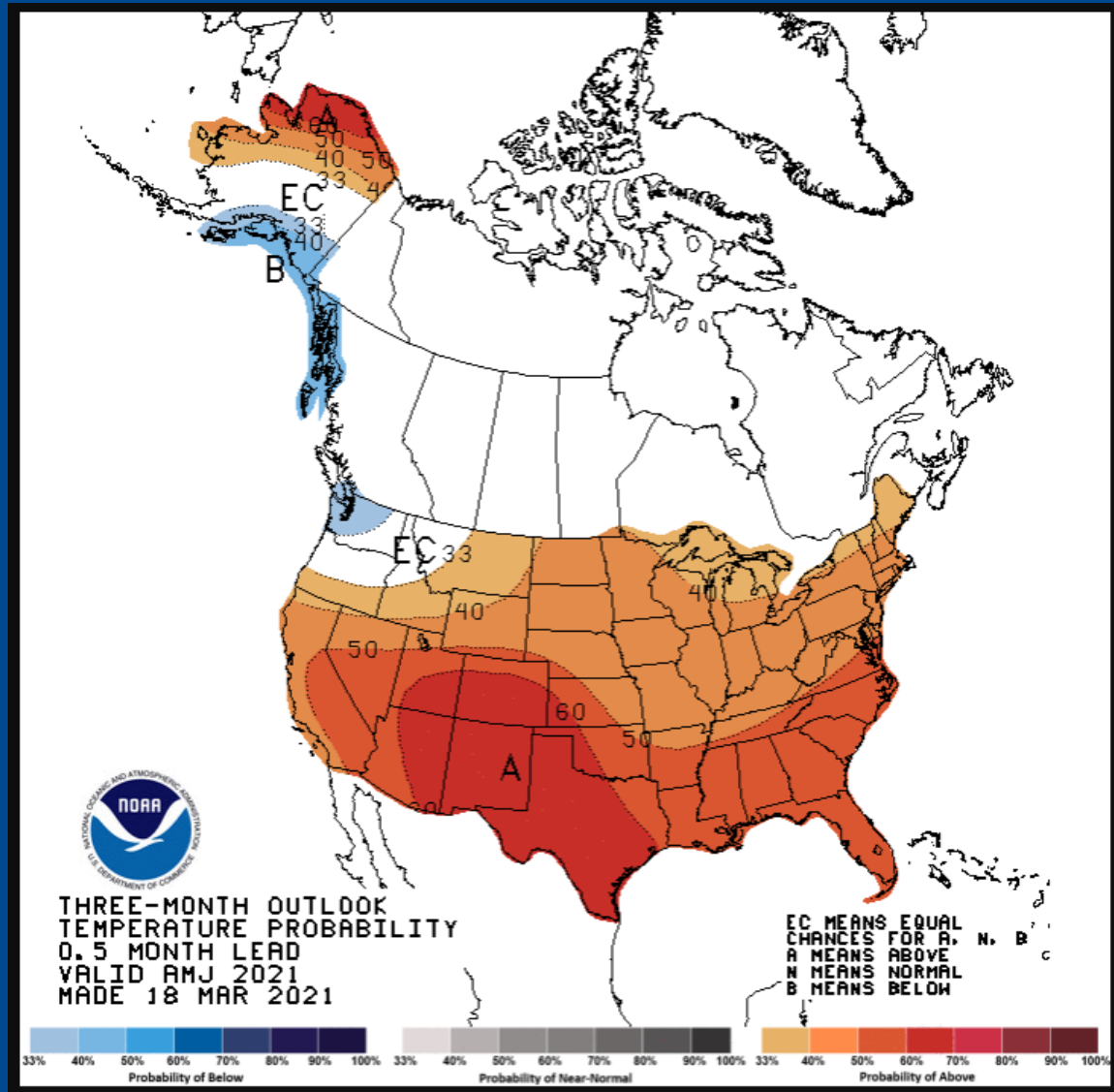
Intensity:

- None
- D0 (Abnormally Dry)
- D1 (Moderate Drought)
- D2 (Severe Drought)
- D3 (Extreme Drought)
- D4 (Exceptional Drought)

Precipitation through June



Temperatures through June



Assumptions

- 70% quota from Northern (issued Apr 8)
- GLIC dividends for dry-year
- Water demand similar to 2012
- No pumping of Windy Gap water (collateralized C-BT)
- 2,000 acre-feet of directs unable to be treated due to water quality issues from Cameron Peak fire impacts



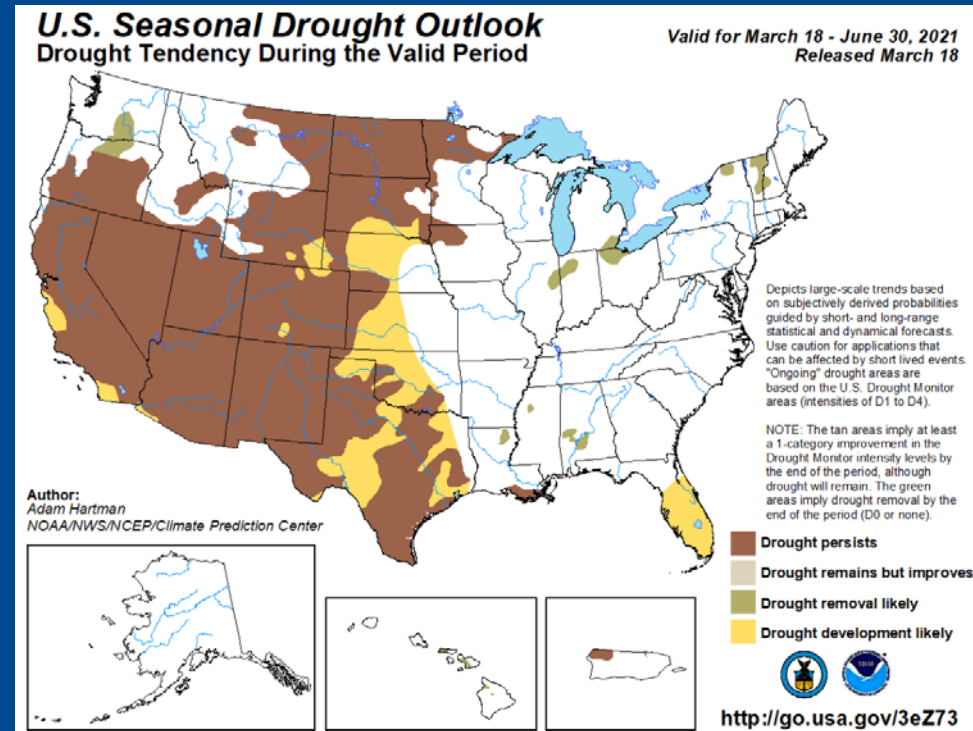
21,300 AF Target Storage

Current Storage (acre-feet)	
CBT	18,835
Windy Gap	0
GLIC	16,355
HMR	1,365
Seaman	3,700
Total	40,254
Demands (April 1, 2021-April 1, 2022) (acre-feet)	
CBT	14,233
CBT carryover	6,127
Windy Gap (collateralized + pumped)	4,046
GLIC	8,304
Seaman	0
HMRs	500
Total	33,211
Yields through April 2022 (acre-feet)	
CBT (Nov. 2022-April 1, 2022)	11,406
Windy Gap	0
GLIC	8,329
HMRs	0
Total	19,735
April 2022 Storage	26,778
Target Storage Volume	21,300



Recommendations

- Declare “Adequate Water Year”
- Maintain target storage volume at 21,300 AF
- Continue long-term rentals
- Rent excess supply



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 10

TITLE: APPROVE AND RECOMMEND TO COUNCIL
THE EVANS SEWER SERVICE
INTERGOVERNMENTAL AGREEMENT

RECOMMENDATION: APPROVE AND RECOMMEND TO COUNCIL
THE EVANS SEWER SERVICE
INTERGOVERNMENTAL AGREEMENT

ADDITIONAL INFORMATION:

The 1st Amendment to the Intergovernmental Agreement for Sewage Treatment Services is Modification of an Existing Agreement with the City Of Evans to Address Sewer Service Associated with the Ashcroft Draw Lift Station Project. The Agreement Addresses Temporary Treatment by Evans for New Taps within the Service Area Prior to Completion of the Ashcroft Draw Lift Station. Once the Lift Station is Completed the Agreement Provides Greeley Emergency Overflow Conveyance and Treatment to Evans for the Lift Station.

**INTERGOVERNMENTAL AGREEMENT FOR
SEWAGE TREATMENT SERVICES**

**BETWEEN THE CITY OF GREELEY, COLORADO
AND THE CITY OF EVANS, COLORADO**

THIS AGREEMENT is made this 1st day of October, 2002, by and between **THE CITY OF GREELEY**, Colorado, a home rule municipality ("Greeley") and **THE CITY OF EVANS**, Colorado, a home rule municipality ("Evans"), for sanitary sewage treatment services by Evans.

WHEREAS, pursuant to § 29-1-203, C.R.S., governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, Evans and Greeley are neighboring municipalities which have a common interest in obtaining high-quality sanitary sewage treatment services sufficient to meet present and future needs for residential, commercial, and industrial uses in the general vicinity of the Ashcroft Draw drainage basin; and

WHEREAS, portions of the Ashcroft Draw drainage basin are now served by the City of Evans through the Hill-N-Park wastewater plant and other portions of the drainage basin are within Greeley's growth area and can be served by Evans with certain sewer main extensions; and

WHEREAS, Evans and Greeley can cost-effectively combine their demand for sewage treatment services using Evans' facilities; and

WHEREAS, in addition to its own needs and demand, Evans has or can make available capacity and facility improvements to meet the needs of Greeley for sewage treatment services within the Ashcroft Draw drainage basin; and

WHEREAS, Evans is agreeable to entering into a long-term intergovernmental agreement for providing sewage treatment services to Greeley service areas which may be served by the Evans sanitary sewage facilities within the Ashcroft Draw drainage basin; and

WHEREAS, the parties are desirous of reducing the understandings, terms and conditions of said agreement to writing.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants, undertakings, terms and conditions contained herein, the parties agree as follows:

1. **DEFINITIONS.** The terms used herein are defined as follows:

1.1 "Evans" shall refer to the City of Evans and any authorized representative thereof.

1.2 "Evans system" shall refer to the interceptor sewers and sewage treatment facilities owned or operated by Evans.

1.3 "Greeley" shall refer to the City of Greeley and any authorized representative thereof.

1.4 "Greeley's service area within the Ashcroft Draw drainage basin " shall be the area within the City of Greeley which can be served by Evans within the Ashcroft Draw drainage basin as shown on the map attached hereto as Exhibit A.

1.5 Greeley's "wastewater collection lines" shall refer to Greeley's sanitary sewer system of pipes, manholes, and appurtenances within the city limits of Greeley.

1.6 "Year" means calendar year.

2. USE.

2.1 General. Pursuant to the terms of this intergovernmental agreement, Greeley agrees to deliver sewage produced within the Greeley service area of the Ashcroft Draw drainage basin to the Evans system for treatment and Evans agrees to provide treatment for such sewage, with the exception of the T-Bone Ranch subdivision, which is discussed in paragraph 2.2. Greeley shall maintain, repair, replace, and rehabilitate the wastewater collection lines which are within its city limits.

2.2 T-Bone Ranch Subdivision. The T-Bone Ranch subdivision is an existing subdivision in the Ashcroft Draw drainage basin that has been annexed to Greeley. Sewage produced within the T-Bone Ranch subdivision is currently delivered to sewage treatment facilities owned and operated by Greeley through a lift station. Greeley and Evans agree that in the future it may be feasible and cost-effective for Greeley to deliver sewage produced within the T-Bone Ranch subdivision to the Evans system for treatment, but the cost and impact of delivering sewage from the T-Bone Ranch subdivision to the Evans system for treatment will require further study. Nothing in this agreement shall commit Greeley to deliver sewage produced within the T-Bone Ranch subdivision to the Evans system for treatment or commit Evans to accept delivery of sewage for treatment.

3. POINT OF DELIVERY. Sewage transmitted through Greeley's system delivered by Greeley to the Evans system shall be delivered by Greeley to a terminal manhole at or close to Greeley's city limits. The point of delivery shall be mutually established and agreed upon in writing by both municipalities. Evans agrees that Greeley shall maintain dominion and control of water in sewage, generated within Greeley's city limits, delivered by Greeley to the Evans system for treatment. Greeley agrees that a portion of water in sewage delivered to the Evans

system for treatment pursuant to the terms of this agreement may be consumed prior to discharge due to treatment or evaporation and that Evans does not guarantee that any specific percentage of the water in sewage delivered by Greeley will be discharged after treatment of Greeley's water rights throughout Evans' system. A sewage metering station may be established in the terminal manhole to assist in tracking the amount of sewage delivered to Evans.

4. NOTICE PRIOR TO ISSUANCE OF SEWER TAPS. Excluding the T-Bone Ranch subdivision, Greeley agrees that it will not issue more than 200 residential sewer taps within the Greeley service area of the Ashcroft Draw drainage area, except as provided herein. Prior to issuance of additional sewer taps, above and beyond the initial 200 taps, within the Greeley service area of the Ashcroft Draw drainage basin, Greeley shall notify Evans in writing that additional sewer taps intend to be issued. The notice shall be given at least 12 months prior to the anticipated date of issuance of any additional sewer taps so Evans can determine whether it can provide treatment from its existing plant or whether expanding the existing plant will be required, Evans at its sole option may waive the notice requirement for issuance of additional sewer taps. Greeley agrees to keep Evans informed of annexations to Greeley within the Ashcroft Draw drainage area so Evans will be able to anticipate the need to treat sewage produced within the Greeley service area of the Ashcroft Draw drainage basin and plan for expansion of the Evans system to accommodate growth of demand for sewage treatment within the Ashcroft Draw drainage basin.

5. TREATMENT OF OTHER SEWAGE. Greeley and Evans agree that it may be feasible and cost-effective for Evans to treat sewage originating within portions of the City of Greeley that are outside the Ashcroft Draw drainage basin; however, nothing in this agreement shall commit Evans to treat such sewage and Greeley agrees that it will not deliver any sewage originating outside the Ashcroft Draw drainage basin to the Evans system for treatment without the express written consent of Evans that it will accept and treat such sewage.

6. TREATMENT CAPACITY. At such time as the existing Hill-N-Park treatment plant is using eighty percent of its capacity, or Evans determines that the existing plant will soon be at or over eighty percent of its capacity, Evans shall limit the number of additional taps, above and beyond the initial 200 taps, that can be issued before the existing plant is using ninety percent of its capacity. The additional permits shall be allocated seventy percent to Evans and thirty percent to Greeley, unless the municipalities agree otherwise. When the existing plant is using ninety percent of its capacity, or at any time that the Colorado Department of Public Health and Environment or other agency responsible for the discharge permit for the existing plant directs Evans that additional sewer taps shall not be issued, Evans and Greeley agree that additional sewer taps will not be issued, unless permitted by the Colorado Department of Public Health and Environment or other agency responsible for the discharge permit. Both municipalities agree to cooperate to anticipate the need to treat sewage produced within the Ashcroft Draw drainage basin and to plan for any expansion of the Evan system to accommodate growth of demand within the Ashcroft Draw drainage area. Evans agrees to expand the Evans system as necessary to accommodate growth of demand within the Ashcroft Draw drainage

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basin. Evans shall make reasonable efforts to provide treatment capacity for Greeley's sewage, including expanding the existing plant when at 90% capacity and/or building a plant capable of meeting future discharge limits. Should Evans fail to begin construction of such capacity when at 90% capacity, Greeley shall have the right to build such treatment systems at the site of the Hill-in-Park lagoons at Greeley's expense. However, Greeley shall accrue no ownership interest under the terms of this agreement. The cost of such a Greeley built system may be applied by Greeley as a credit against money due Evans under this contract.

7. SYSTEM DEVELOPMENT CHARGE. A system development charge (SDC), as assessed per a fee resolution adopted by the Evans City Council, shall be due to Evans for each sewer tap in the Greeley sewer system which is treated by Evans. The SDC shall be due on a monthly basis as sewer taps are issued within the Greeley service area of the Ashcroft Draw drainage area. For any sewer tap for sewage originating within portions of Greeley that are outside the Ashcroft Draw drainage basin (pursuant to paragraph 5), the SDC shall be due at the time Evans agrees to accept or treat such sewage, or as otherwise agreed by the municipalities. The SDC shall be equal to the plant investment fee charged by Evans for similar uses in the Ashcroft Draw drainage basin. In no case shall system development fees be refunded.

8. RATES. Charges for sewage treatment shall be paid by Greeley to Evans. The rates for sewage treatment shall be consistent with rates charged to Evans customers of similar rate classes. The service rates shall be reviewed annually and adjusted in accordance with section 2.24.081 of the Evans Municipal Code. Service rates for Greeley customers shall be uniform with other customers of the same class in the Ashcroft Draw drainage basin, less Evans' cost of collection system maintenance within the Greeley service area of the Ashcroft Draw drainage basin, as Greeley will provide collection system maintenance within Greeley city limits. Rates for commercial accounts will be based on actual water usage as defined by Evans. If Evans requires water meter readings for billing, Greeley shall provide Evans with the meter data within thirty days of obtaining the meter reading.

9. BILLINGS. Evans will submit one invoice to Greeley monthly, for all customers being serviced within Greeley by Evans, including SDC. Invoices shall be paid within thirty days of receipt, after which time interest penalties shall begin to accrue at the rate of one percent per month, or fraction thereof, during the period in which the invoice remains unpaid.

10. INDUSTRIAL PRETREATMENT Greeley shall operate and enforce an EPA-approved industrial pretreatment program to protect the Evans system from undesirable sewage discharge.

11. RELEASE, HOLD HARMLESS, INDEMNIFICATION. Both Evans and Greeley are public entities, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. The parties to this agreement have the benefits and responsibilities enumerated in the Colorado Governmental Immunity Act. Each party shall defend any and all claims for injuries or damages pursuant to and in accordance with the

requirements and limitations of the Colorado Governmental Immunity Act occurring as a result of negligent or intentional acts or omissions of the parties, their officers, agents, employees and assignees.

In addition, Greeley shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Greeley, its officers, employees, agents, and assignees performing functions or activities upon the property of Evans. Greeley shall provide adequate workmen's compensation insurance for all of its employees, agents and assigns engaged in activities and functions upon the property of Evans or Greeley.

Evans shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Evans, its officers, employees, agents, and assignees performing functions or activities upon the property of Greeley. Evans shall provide adequate workmen's compensation insurance for all of its officers, employees, agents and assignees engaged in activities and functions upon the property of Greeley.

Each party shall furnish the other party current certificates of insurance stating that the coverages outlined above are in full force and effect.

12. NO PUBLIC UTILITIES COMMISSION CONTROL. Greeley, its employees and elected or appointed officials, agree neither to assert nor support any statement, policy, petition, rule making, or legislature attempt to place the Evans sewage treatment services system under the authority or jurisdiction of the Colorado Public Utilities Commission by virtue of this intergovernmental agreement or otherwise.

13. TERM. In the interest of reliability and security, this agreement shall be for an initial term of ten years from the date of its execution. After its initial term, this agreement shall be automatically renewed for successive five-year terms, unless terminated as provided below.

14. DEFAULT AND TERMINATION.

14.1 In the event either party fails to meet the terms and conditions of this agreement, such failure shall constitute a default of this agreement and the non-defaulting party may give notice of the perceived default. Notice shall be delivered to the defaulting party's city manager. The defaulting party may cure any default during the ninety days following the notice. Upon cure of any default, this agreement shall remain in full force and effect. Upon receipt of notice of perceived default, the defaulting party may invoke dispute resolution as provided in Paragraph 15.

14.2 If after the cure period above or after mutually agreed extensions, the non-defaulting party determines the default has not been cured, such defaulting party may give two years notice of termination of this agreement. Nothing herein shall limit either party from collecting damages and amounts due from the other party upon termination of this agreement by default.

14.3 With at least two years notice, either party may terminate the contract without default and for any or no reason at the end of the current term.

15. JURISDICTION AND VENUE. This agreement shall be governed by, interpreted, and enforced pursuant to the laws of the State of Colorado. Venue to enforce this agreement shall be in Weld County, CO.

16. AMENDMENT. This agreement shall be amended only in writing with the approval of the governing bodies of both municipalities. No amendment or modification of this agreement shall be effective unless in writing, approved by both City Councils, and signed by the Mayors of both municipalities.

17. DISPUTE RESOLUTION. Should disagreements arise regarding any portion of this agreement the parties agree to make efforts to resolve such disputes through negotiation; first, at the staff level; and second, with the respective Water Boards and/or City Councils. Procedures for such negotiations shall be established by mutual agreement at the time and may, with the concurrence of the parties, involve the use of qualified outside mediators. Any negotiations and resolution agreements reached therefrom must be within the legal authority granted to the parties by appropriate City Charters and/or State statutes, or shall be null and void. Notwithstanding anything to the contrary in this agreement, it is expressly agreed between the parties that this provision for dispute resolution does not apply to the authority granted the Greeley Water and Sewer Board pursuant to § 17-4 of the Greeley City Charter, including but not limited to, the establishment of minimum water and sewer rates.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

THE CITY OF EVANS, COLORADO

ATTEST:

By: Kim Bety
City Clerk

By: Sherry Melley
Mayor

Approved as to Substance:

By: [Signature]
City Manager

Approved as to Legal Form:

By: [Signature]
City Attorney

THE CITY OF GREELEY, COLORADO

ATTEST:

By: Betsy A. Holder
City Clerk

By: Debbie Pilch
Mayor Pro Tem

Approved as to Substance:

By: [Signature]
City Manager

Approved as to Legal Form:

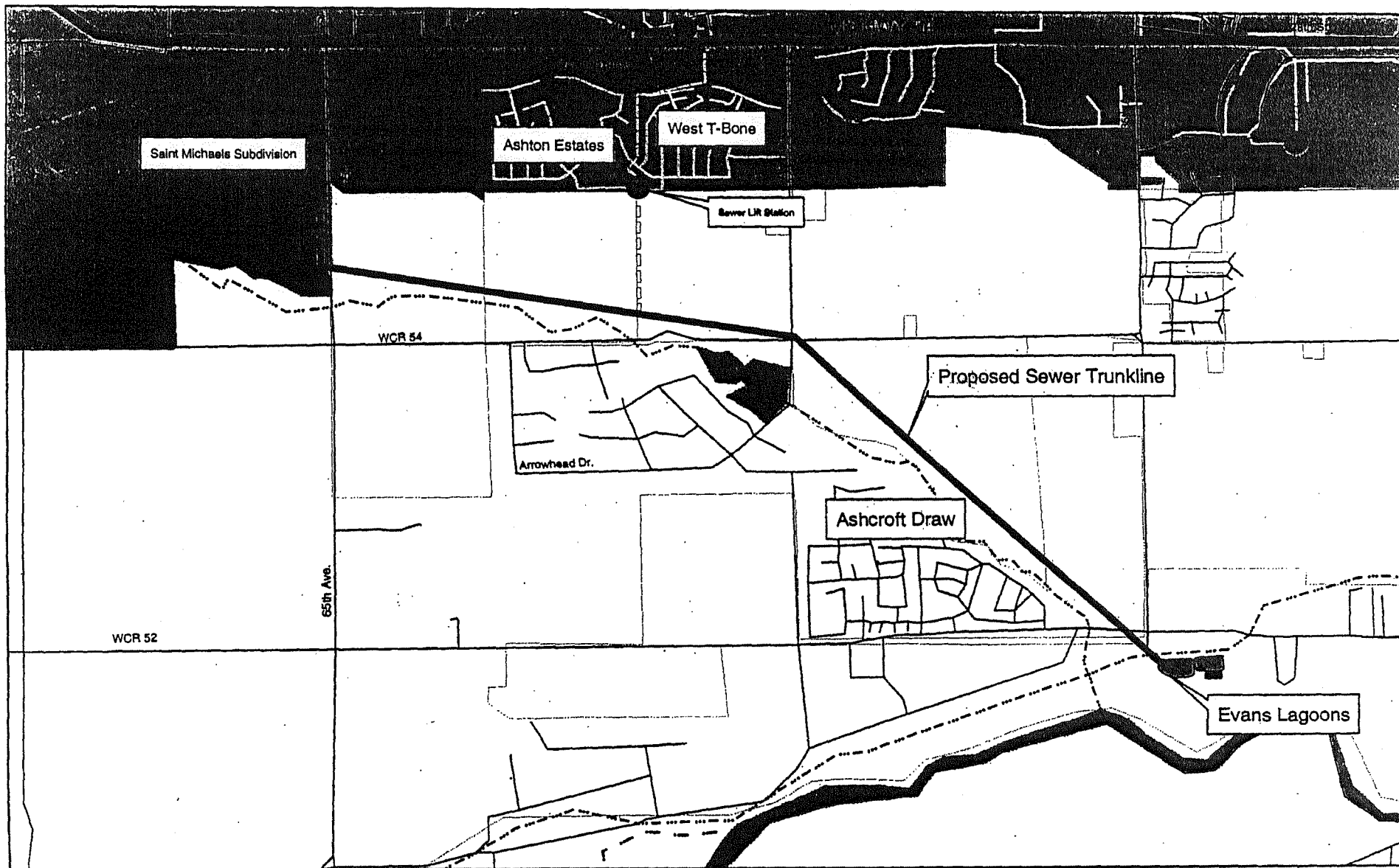
By: [Signature]
City Attorney

As to Availability of Funds:

By: [Signature]
Director of Finance

GREELEY WATER AND SEWER BOARD

By: Harold H. Ems
Chairman



12/00

FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR SEWAGE TREATMENT SERVICES

BETWEEN THE CITY OF GREELEY, COLORADO
AND THE CITY OF EVANS, COLORADO

This FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR SEWAGE TREATMENT SERVICES ("Agreement") is entered into this ____ day of _____ 202__, by and between THE CITY OF GREELEY, COLORADO, a home rule municipality ("Greeley") and THE CITY OF EVANS, COLORADO, a home rule municipality ("Evans").

Recitals

WHEREAS, pursuant to C.R.S. § 29-1-203, governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to be provided by each of the cooperating or contracting units of government; and

WHEREAS, Greeley and Evans entered into that certain intergovernmental agreement dated October 1, 2002 ("2002 Sanitary Sewer IGA"), which set the terms and conditions by which Evans would provide sanitary sewer treatment services to customers within a portion of the Greeley service area commonly known as the Ashcroft Draw Drainage Basin; and

WHEREAS, Greeley and Evans have a continued common interest in cost-effectively combining their sanitary sewer demand and providing high-quality sanitary sewer treatment services sufficient to meet present and future needs for residential, commercial, and industrial uses in the general vicinity of the Ashcroft Draw Drainage Basin; and

WHEREAS, Greeley plans to construct a new lift station to assist in providing sanitary sewage treatment services to customers in portions of the Ashcroft Draw Drainage Basin, which it anticipates will accommodate 2.9 million gallons per day of peak flow at full build-out; and

WHEREAS, Greeley and Evans desire to establish terms and conditions by which they will coordinate the service of sanitary sewer customers in this area into the future; and

WHEREAS, Evans remains agreeable to providing sanitary sewage treatment services to customers in the Ashcroft Draw Drainage Basin until the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and able to facilitate service by Greeley in this area; and

WHEREAS, Greeley and Evans have reached an understanding regarding their continued coordination on sanitary sewer treatment services, and desire to reduce their understanding to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Greeley and Evans agree as follows.

Agreement

1. Definitions. The terms used in this Agreement are defined as follows.

1.1 Evans. The City of Evans and any duly authorized representative thereof.

1.2 Evans Ashcroft Draw Sanitary Sewer Trunk Line. The sanitary sewer trunk line owned and operated by Evans that is located generally along the north side of the Ashcroft Draw from 49th Street northwesterly to 65th Avenue, as shown on the map attached hereto as Exhibit A.

1.3 Evans Consolidated Wastewater Treatment Facility. The wastewater treatment facility owned and operated by Evans that is located generally at 49th Street and 35th Avenue, which treatment facility was previously known as the Hill-N-Park wastewater treatment plant.

1.4 Evans Sanitary Sewer System. Interceptor sewers and all other sanitary sewer treatment facilities and infrastructure owned and operated by Evans.

1.5 Greeley. The City of Greeley and any duly authorized representative thereof.

1.6 Greeley Ashcroft Draw Sanitary Sewer Lift Station. The sanitary sewer lift station planned to be constructed, owned, and operated by Greeley in the SW ¼ of Section 21, Township 5 North, Range 66 West of the 6th P.M. in Weld County, the anticipated general location of which is shown on Exhibit A.

1.7 Greeley Ashcroft Draw Service Area. That certain geographical area within the city limits of Greeley to which Evans can provide sanitary sewer services via the Evans Ashcroft Draw Sanitary Sewer Trunk Line, as shown on Exhibit A.

2. Term of Agreement. The initial term of this Agreement commences on the date it is mutually executed by Greeley and Evans, and expires after a period of ten (10) years. Upon expiration of the initial ten-year term, the Agreement will automatically renew for successive terms of five (5) years each, unless terminated by either Greeley or Evans in accordance with section 20 below.

3. General Sanitary Sewer Treatment Services. Greeley and Evans anticipate further development and a corresponding demand for sanitary sewer services within the Greeley Ashcroft Draw Service Area, a geographic area now broader than contemplated by the 2002 Sanitary Sewer IGA that will be served in the future by the Greeley Ashcroft Draw Sanitary Sewer Lift Station. Greeley may deliver sanitary sewage produced by its customers within the Greeley Ashcroft Draw Service Area to the Evans Sanitary Sewer System, and Evans shall treat such sanitary sewage for Greeley, until the Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational. Greeley may deliver such sanitary sewage via one or more terminal manholes at or close to the Greeley city limits, and Greeley and Evans shall mutually establish all such points of delivery in writing.

4. Issuance of Taps for General Sanitary Sewer Treatment Services. At the time this Agreement is executed, there are approximately 450 sanitary sewer taps in the Greeley Ashcroft Draw Service Area. From the execution of this Agreement, Greeley agrees that it will not issue more than 200 additional residential sanitary sewer taps within the Greeley Ashcroft Draw Service Area without providing advance written notice to Evans. Greeley shall provide such notice to Evans at least one year in advance of issuing any sanitary sewer taps beyond the cumulative total of 650 taps, so that Evans can plan for any necessary expansion of the Evans Sanitary Sewer System to accommodate increased demand. Greeley shall keep Evans apprised of annexations to Greeley within the Ashcroft Draw Drainage Basin, so that Evans can anticipate the need to treat sanitary sewage produced within the Greeley Ashcroft Draw Service Area, and plan for any necessary expansion of the Evans Sanitary Sewer System to accommodate increased demand.

5. System Development Charges. Greeley shall pay to Evans the following system development charges for general sanitary sewer treatment services provided pursuant to section 3 above, until the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational. System development charges are not refundable.

5.1 For each new sanitary sewer tap installed in the Greeley Ashcroft Draw Service Area and served by Evans pursuant to section 3 above, Greeley shall pay to Evans a monthly system development charge (“SDC”) in the amount of 4.17 percent (i.e., one-twelfth of one-half) of the plant investment fee charged by Evans for sanitary sewer customers outside its own city limits at the time such tap is installed.

5.2 Greeley shall be responsible for the monthly SDC payments described in section 5.1 above only until the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational, and only up to a maximum of twelve (12) monthly SDC payments for each new sanitary sewer tap installed in the Greeley Ashcroft Draw Service Area and served by Evans (i.e., a total maximum amount for each tap equal to one-half of the plant investment fee charged by Evans for sanitary sewer customers outside its city limits at the time such tap is installed).

5.3 In the event that the Greeley Ashcroft Draw Sanitary Sewer Lift Station is not constructed and operational within five (5) years from the execution of this Agreement, Greeley shall be responsible for twelve (12) additional monthly SDC payments to Evans for each new sanitary sewer tap installed in the Greeley Ashcroft Draw Service Area and served by Evans (i.e., a total maximum amount for each tap equal to the entire plant investment fee charged by Evans for sanitary sewer customers outside its city limits at the time such tap is installed).

6. Emergency and Operational Disruption Sanitary Sewer Treatment Services. After the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational, Greeley may deliver sanitary sewage produced by its customers within the Greeley Ashcroft Draw Service Area to the Evans Ashcroft Draw Sanitary Sewer Trunk Line in the event of an emergency or as otherwise contemplated by this section 6, and Evans shall treat such sanitary sewage for Greeley. Delivery of any such sanitary sewage after the Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational will occur only in the event of an emergency or other event of operational necessity, including, without limitation, the disruption of power to, malfunction of, or shutdown for necessary maintenance of, the Greeley Ashcroft Draw Sanitary Sewer Lift Station. Failure by Greeley to construct the Greeley Ashcroft Draw Sanitary Sewer Lift Station within five (5) years, as contemplated by this Agreement, shall not constitute an emergency.

6.1 Greeley may deliver sanitary sewage to the Evans Ashcroft Draw Sanitary Sewer Trunk Line in the event of an emergency or operational disruption for up to four (4) hours without a requirement to obtain further authorization from Evans. Greeley shall provide notice of such an event to Evans as soon as reasonably practicable. The volume of sanitary sewage flow to be necessarily delivered by Greeley in such an event is estimated to be an average daily flow of 483,000 gallons. This figure is an estimate for planning purposes only and should not be construed as a limit on deliveries of sanitary sewage by Greeley beyond the Evans Sanitary Sewer System treatment capacity limitations described below, or as a contractual reservation of capacity in the Evans Sanitary Sewer System.

6.2 Greeley shall obtain further authorization from Evans to deliver sanitary sewage in the event of an emergency lasting longer than four (4) hours. Notwithstanding the standards for notice set forth in section 18 below, such authorization may be requested by Greeley and granted by Evans verbally. Greeley shall provide the anticipated duration of the emergency event and anticipated peak and daily volume of sanitary sewage flow to be necessarily delivered to Evans as soon as reasonably practicable.

6.3 Greeley shall obtain further authorization from Evans to deliver sanitary sewage in the event of a foreseeable operational disruption lasting longer than four (4) hours. Greeley shall

make the request for such authorization in writing, providing a description of the operational disruption, the anticipated duration of the operational disruption, the anticipated peak and daily volume of sanitary sewage flow to be necessarily delivered, and the desired commencement and end dates for the deliveries. Evans shall respond to such a request within ten (10) days of receipt.

7. Treatment Capacity before Greeley Ashcroft Draw Lift Station is Operational. Before the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational and at such time that the Evans Consolidated Wastewater Treatment Facility is using eighty (80) percent of its treatment capacity, or at such time that Evans reasonably determines that the Evans Consolidated Wastewater Treatment Facility will soon be at or over eighty (80) percent of its treatment capacity, Evans may limit the number of additional sanitary sewer taps that may be issued by Greeley in the Greeley Ashcroft Draw Service Area before the facility will use ninety-five (95) percent of its treatment capacity. In such an event, Evans shall determine the total number of additional sanitary sewer taps that may be issued by both parties before the Evans Consolidated Wastewater Treatment Facility will use ninety-five (95) percent of its capacity. Evans may then issue up to seventy (70) percent, and Greeley may issue up to the remaining thirty (30) percent, of the total additional sanitary sewer taps that Evans determines issuable before the Evans Consolidated Wastewater Treatment Facility will use ninety-five (95) percent of its treatment capacity. Issuance of sanitary sewer taps by Greeley pursuant to this allocation remains subject to the advance notice requirements of section 4 above.

7.1 At such time that the Evans Consolidated Wastewater Treatment Facility is using ninety-five (95) percent of its capacity, or at such time that the Colorado Department of Public Health and Environment or other responsible agency directs Evans that it may not issue any additional sanitary sewer taps, Greeley shall also cease issuing additional sanitary sewer taps in the Greeley Ashcroft Draw Service Area unless otherwise permitted by the Colorado Department of Public Health and Environment or other responsible agency.

7.2 Greeley and Evans agree to cooperate to anticipate sanitary sewer treatment demand in the Ashcroft Draw Drainage Basin, and to plan for any resulting necessary expansion of the Evans Sanitary Sewer System to accommodate increased demand.

7.3 Evans shall make reasonable efforts to provide treatment capacity for sanitary sewage from Greeley, including reasonable efforts to expand the Evans Consolidated Wastewater Treatment Facility when the plant is at ninety-five (95) percent capacity. If Evans fails to commence such capacity expansion as described when the Evans Consolidated Wastewater Treatment Facility is at ninety-five (95) percent capacity, Greeley may build or expand upon such sanitary sewer treatment facilities at the current Evans Consolidated Wastewater Treatment Facility site at its own expense. However, nothing in this Agreement should be construed to grant to Greeley an ownership interest in the Evans Sanitary Sewer System. Evans shall credit any expenses borne by Greeley to construct the sanitary sewer facilities contemplated by this paragraph against amounts otherwise due and payable under this Agreement.

8. Rates. Greeley shall pay to Evans the following rates for sanitary sewer treatment services provided pursuant to this Agreement.

8.1 General Sanitary Sewer Treatment Services. Greeley shall pay rates for sanitary sewage delivered by Greeley and treated by Evans pursuant to section 3 above, which rates shall be consistent with those charged by Evans to its own customers. Greeley shall pay the flat monthly rate charged by Evans for sanitary sewage attributable to residential customers, and the applicable flow rate charged by Evans to similar customer classes for every 1,000 gallons of sanitary sewage

attributable to commercial customers (e.g., the Class II commercial rate for schools, churches, warehouses and offices). Evans shall review and may adjust these rates annually in accordance with section 2.24.081 of the Evans Municipal Code, but shall keep the rates consistent with those charged by Evans for similar service to its own sanitary sewer customers. Rates for any commercial sanitary sewer accounts shall be based on actual water usage, as determined by Evans using an industry standard cost-of-service methodology.

8.2 Emergency and Operational Disruption Sanitary Sewer Treatment Services. Greeley shall pay a rate equal to the Evans Class II commercial rate for every 1,000 gallons of sanitary sewage delivered by Greeley and treated by Evans pursuant to section 6 above. Evans shall review and may adjust this rate annually, in accordance with section 2.24.081 of the Evans Municipal Code, but shall keep the rate consistent with that charged by Evans for similar service to its own sanitary sewer customers.

9. Billing and Payment. Greeley shall remain responsible for billing and collecting all applicable fees and rates from its sanitary sewer customers in the Greeley Ashcroft Draw Service Area, including, without limitation, plant investment fees.

9.1 System Development Charges. Greeley shall commence payment to Evans of the monthly SDC associated with each new sanitary sewer tap, as described in section 5 above, upon its receipt of a sanitary sewer plant investment fee from that customer. Greeley shall provide a monthly report to Evans summarizing all new sanitary sewer taps installed in the Greeley Ashcroft Draw Service Area and associated SDCs due, and remit payment to Evans for SDCs due within thirty (30) days after receipt from Evans of the invoices described in section 9.2 below.

9.2 Usage Charges. Greeley shall collect the meter readings necessary to measure General and Emergency and Operational Sanitary Sewer Treatment Services provided pursuant to this Agreement, which will determine the amounts owed to Evans for such services as described in section 8 above. Greeley shall submit meter readings for commercial customers and a residential customer count to Evans for General Sanitary Sewer Treatment Services monthly, and shall submit meter readings to Evans for total Emergency or Operational Disruption Sanitary Sewer Treatment Services within thirty (30) days after such services have concluded. Evans shall submit invoices to Greeley within thirty (30) days of receiving meter readings, and Greeley shall remit payment to Evans within thirty (30) days of receiving an invoice. Any invoiced amounts remaining due after such thirty-day period shall accrue interest at a rate of one (1) percent per month, or fraction thereof, during the period in which the invoice remains unpaid.

10. Sanitary Sewer Service to 3695 65th Avenue Property. The Greeley Ashcroft Draw Sanitary Sewer Lift Station is planned to be constructed upon property currently located within the parcel identified as Parcel No. 095921300003 and located at 3695 65th Avenue, which parcel is currently in unincorporated Weld County (“3695 65th Avenue Property”) and within the Long Range Expected Growth Area of the City of Greeley. Sanitary sewage produced on the 3695 65th Avenue Property currently flows to the Evans Ashcroft Draw Sanitary Sewer Trunk Line, and its owner is an Evans customer. Greeley and Evans do not anticipate that the Greeley Ashcroft Draw Sanitary Sewer Lift Station will be able to receive by gravity sanitary sewage produced on the 3695 65th Avenue Property. In the event that the 3695 65th Avenue Property annexes to the City of Greeley and its owner accordingly becomes a Greeley customer, Greeley may continue to deliver sanitary sewage produced thereon to the Evans Ashcroft Draw Sanitary Sewer Trunk Line after the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational. Greeley shall pay rates to Evans for the service of sanitary sewage produced on the Lift Station Property as set forth in section 8.1 above. Greeley and Evans acknowledge that this paragraph is intended to apply to the 3695 65th Avenue Property as it is currently developed, and agree to renegotiate this section

10 in good faith if the 3695 65th Avenue Property is producing significantly higher volumes of sanitary sewage at the time the provisions of this section 10 are triggered.

11. Industrial Pretreatment. Greeley shall continue to operate and enforce an industrial pretreatment program approved by the Environmental Protection Agency to prevent any discharge of sanitary sewage into the Evans Sanitary Sewer System in a manner inconsistent with applicable legal or regulatory authority.

12. Dominion and Control of Water. Greeley shall maintain dominion and control of its water in the sanitary sewer that is generated within the city limits of Greeley and delivered by Greeley into the Evans Sanitary Sewer System. Greeley acknowledges that a portion of its water in sanitary sewer delivered to the Evans Sanitary Sewer System pursuant to this Agreement may be consumed prior to discharge due to treatment or evaporation, and that Evans cannot guarantee that any specific percentage of the water in the sanitary sewer delivered by Greeley will be discharged after treatment in the Evans Sanitary Sewer System.

13. Maintenance of Infrastructure. Greeley and Evans shall each maintain, repair, replace, and rehabilitate the sanitary sewer infrastructure that each municipality respectively owns and operates.

14. Sanitary Sewer Metering. Greeley shall purchase, construct, install, and maintain any metering stations and associated facilities necessary to meter the general and emergency sanitary sewer treatment services provided pursuant this Agreement.

15. Acquisition of Right of Way. Greeley shall bear sole responsibility for the acquisition of any property interests necessary for the construction, operation, and maintenance of emergency collection lines from the Greeley Ashcroft Draw Sanitary Sewer Lift Station.

16. Permitting. Greeley shall bear sole responsibility for obtaining any local, state, or federal approvals necessary prior to or during the construction of emergency collection lines from the Greeley Ashcroft Draw Sanitary Sewer Lift Station.

17. No Public Utilities Commission Regulation. Greeley and Evans, including their employees and elected or appointed officials, shall not assert nor support any statement, policy, petition, rule-making, or legislative attempt to place the Greeley or Evans sanitary sewer treatment systems under the authority or jurisdiction of the Colorado Public Utilities Commission by virtue of this Agreement or otherwise.

18. Notice. Greeley and Evans shall give any notice required under this Agreement using the contact information listed below. Such notice is adequate if (a) hand-delivered or (b) provided by certified mail, return receipt requested. Greeley and Evans shall promptly notify the other party if the appropriate contact information for notice changes.

For the City of Greeley:

City of Greeley Water and Sewer Department
Attn: Director of Water and Sewer
1001 11th Avenue, Second Floor
Greeley, Colorado 80631

With copy to:

City of Greeley City Attorney's Office
Attn: Environmental and Water Resources
1100 10th Street, Suite 401
Greeley, Colorado 80631

For the City of Evans: City of Evans Public Works Department
Attn: Assistant City Manager
1100 37th Street
Evans, Colorado 80620

With copies to: City of Evans Wastewater Department
Attn: Robby Porsch
1100 37th Street
Evans, Colorado 80620

Evans City Attorney
Attn: Scotty P. Krob
8400 E. Prentice Ave, Penthouse
Greenwood Village, CO 80111

19. Indemnification and Liability. Greeley and Evans are public entities, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Nothing in this Agreement should be construed to limit or alter the benefits and responsibilities to which either Greeley or Evans is entitled pursuant to the Colorado Governmental Immunity Act. Greeley and Evans respectively shall defend any and all claims for injuries or damages, in accordance with the requirements and limitations of the Colorado Governmental Immunity Act, that occur as a result of the negligent or intentional acts or omissions of its own officers, agents, employees, or assigns. Greeley and Evans respectively shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of its own officers, employees, agents, and assignees performing functions or activities upon the property of the other party. Greeley and Evans respectively shall provide adequate workmen's compensation insurance for all of its own employees, agents and assigns engaged in activities and functions upon the property of the other party. Upon request from the other party, Greeley and Evans shall each furnish to the other current certificates of insurance stating that the coverages outlined above are in full force and effect.

20. Default and Termination; Waiver. In the event either Greeley or Evans fails to comply with the terms and conditions of this Agreement, such failure constitutes a default of this Agreement and the non-defaulting party may give notice of the perceived default in accordance with section 18 above. The defaulting party is then entitled to a period of ninety (90) days from receipt of the notice within which to cure the default, and may invoke the provisions regarding dispute resolution set forth in section 23 below. Upon the cure of any such default during this period, this Agreement remains in full force and effect.

20.1 If any declared default remains uncured after the ninety-day cure period described above, or after any extension of the cure period mutually agreed to by the parties, the non-defaulting party may terminate this Agreement with an advance notice of one (1) year to the defaulting party. Nothing in this Agreement should be construed to limit either party from seeking damages or pursuing available remedies upon the termination of this Agreement for default, including the recovery of reasonable costs and attorneys' fees.

20.2 Notwithstanding the foregoing, Greeley or Evans may terminate this Agreement, in the absence of default, for any or no reason whatsoever, by providing an advance notice of termination to the other party of two (2) years. Termination under this Subsection 20.2 shall be effective two (2) years after the date that notice of such termination is provided under section 18 above.

20.3 The failure of either Greeley or Evans to declare a default does not establish a precedent nor constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement. Any such waiver of breach must be made explicitly in writing.

21. Jurisdiction and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any dispute arising out of this Agreement is the Weld County District Court.

22. Third Party Beneficiaries. The terms and conditions of this Agreement, and all rights of action related thereto, are strictly reserved to Greeley and Evans. Nothing in this Agreement should be construed to allow any claim, right, or cause of action by any person or entity not a party to this Agreement. Any person or entity other than Greeley or Evans that receives a service or benefit under this Agreement is an incidental beneficiary only.

23. Dispute Resolution. Prior to the commencement of litigation, Greeley and Evans shall make reasonable efforts in good faith to negotiate and resolve any dispute that arises out of this Agreement (a) first at the staff level, and then (b) through the Water and Sewer Boards and City Councils for both municipalities. Procedures for such negotiation and resolution shall be established by mutual agreement in writing at that point in time, and may include the use of outside mediators if deemed appropriate. Any agreement for negotiation and resolution of disputes pursuant to this paragraph must be within the legal authority held by Greeley and Evans pursuant to the Colorado Revised Statutes, their respective city charters, and respective municipal codes. Notwithstanding any term in this Agreement to the contrary, Greeley and Evans agree that the provisions for dispute resolution in this paragraph do not apply to the authority granted to the City of Greeley Water and Sewer Board by Section 17-4 of the Greeley City Charter, which authority includes, but is not limited to, the authority to establish minimum water and sewer rates.

24. Integration and Amendment. This Agreement constitutes a complete integration of the understandings and agreement between Greeley and Evans with respect to the subject matter herein, and supersedes the 2002 Sanitary Sewer IGA in its entirety. This Agreement is not intended, and shall not be construed, to amend the existing and separate 2011 IGA between Evans and Greeley regarding emergency sewage treatment services for the T-Bone Sewage Lift Station, dated June 7, 2011. No representations, negotiations, or warranties, express or implied, exist between Greeley and Evans except as explicitly set forth in this Agreement. This Agreement may only be amended in a writing duly authorized and executed by Greeley and Evans.

25. Counterparts. The parties may execute this Agreement in counterparts, each of which and the combination of which when signed by both Greeley and Evans may be deemed original and together constitute a single contract.

IN WITNESS WHEREOF, the City of Greeley and the City of Evans have authorized and executed this First Amendment to Intergovernmental Agreement for Sewage Treatment Services on the date set forth above.

THE CITY OF GREELEY,
a Colorado home rule municipality

By: _____
City Manager

Approved as to Legal Form:

By: _____
City Attorney

As to Availability of Funds:

By: _____
Director of Finance

THE CITY OF EVANS
a Colorado home rule municipality

Attest:

By: _____
Mayor

By: _____
City Clerk







Approved as to Substance:

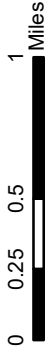
By: _____
City Manager

Approved as to Legal Form:

By: _____
City Attorney

Exhibit A: Ashcroft Draw Sanitary Sewer Reference Map

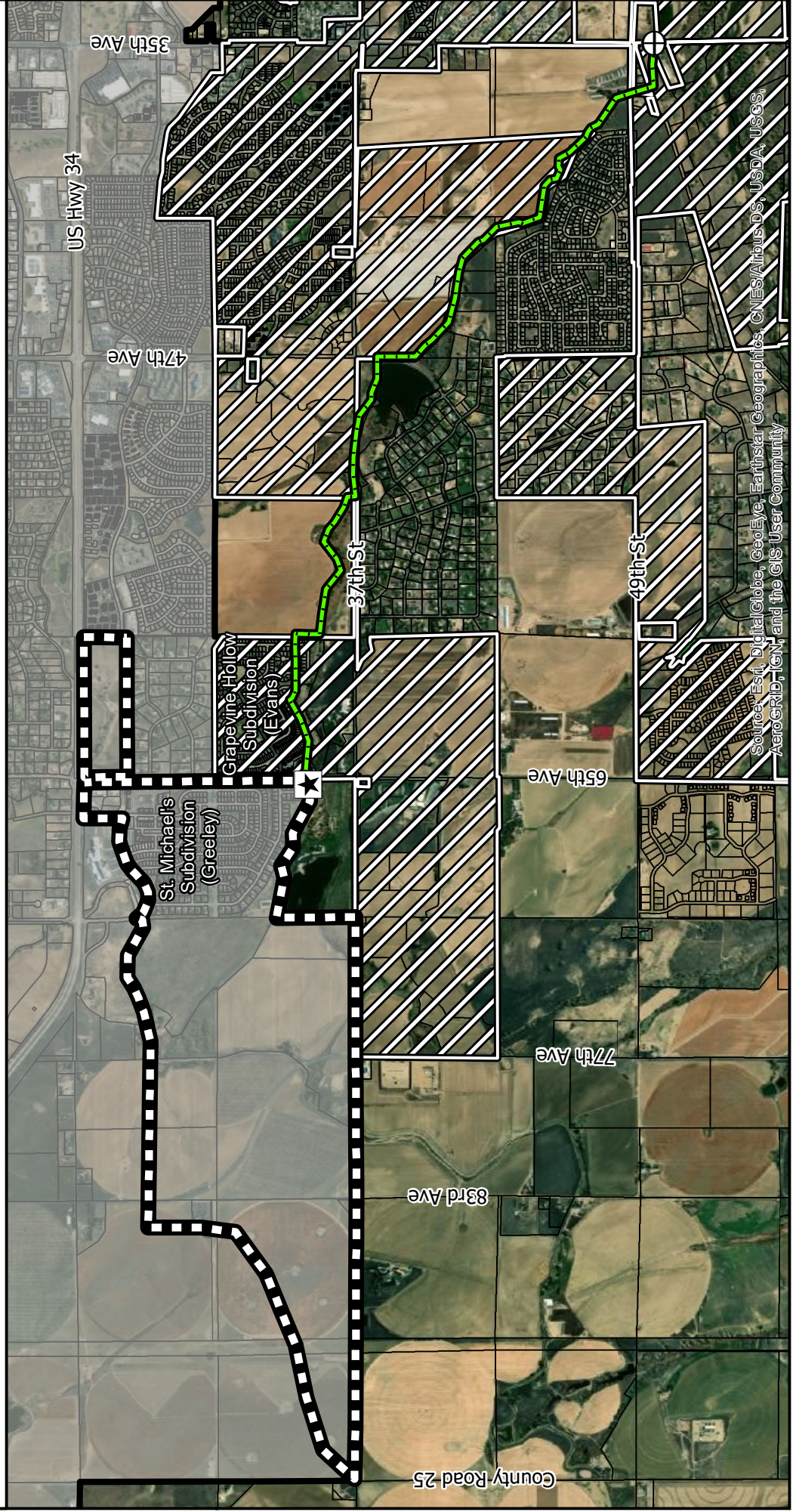
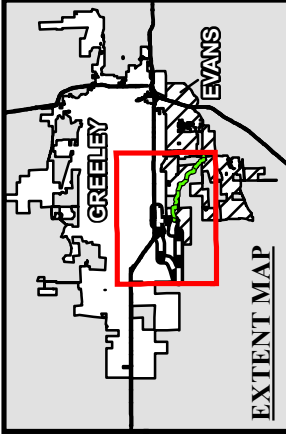
-  Evans City Limits
-  Evans Ashcroft Draw Sanitary Sewer Trunk Line
-  Evans Wastewater Treatment Facility
-  Greeley City Limits
-  Greeley Ashcroft Draw Sanitary Sewer Lift Station
-  Greeley Ashcroft Lift Station Service Area



Date: 7/13/2020

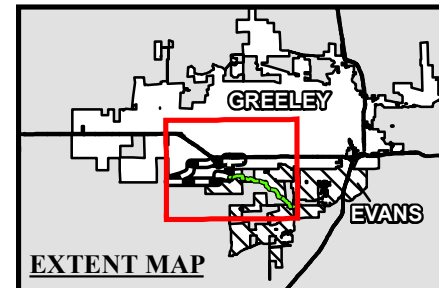
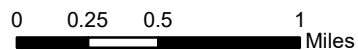
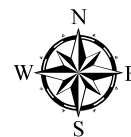
By: Greeley Water & Sewer Department







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Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Exhibit A: Ashcroft Draw Sanitary Sewer Reference Map

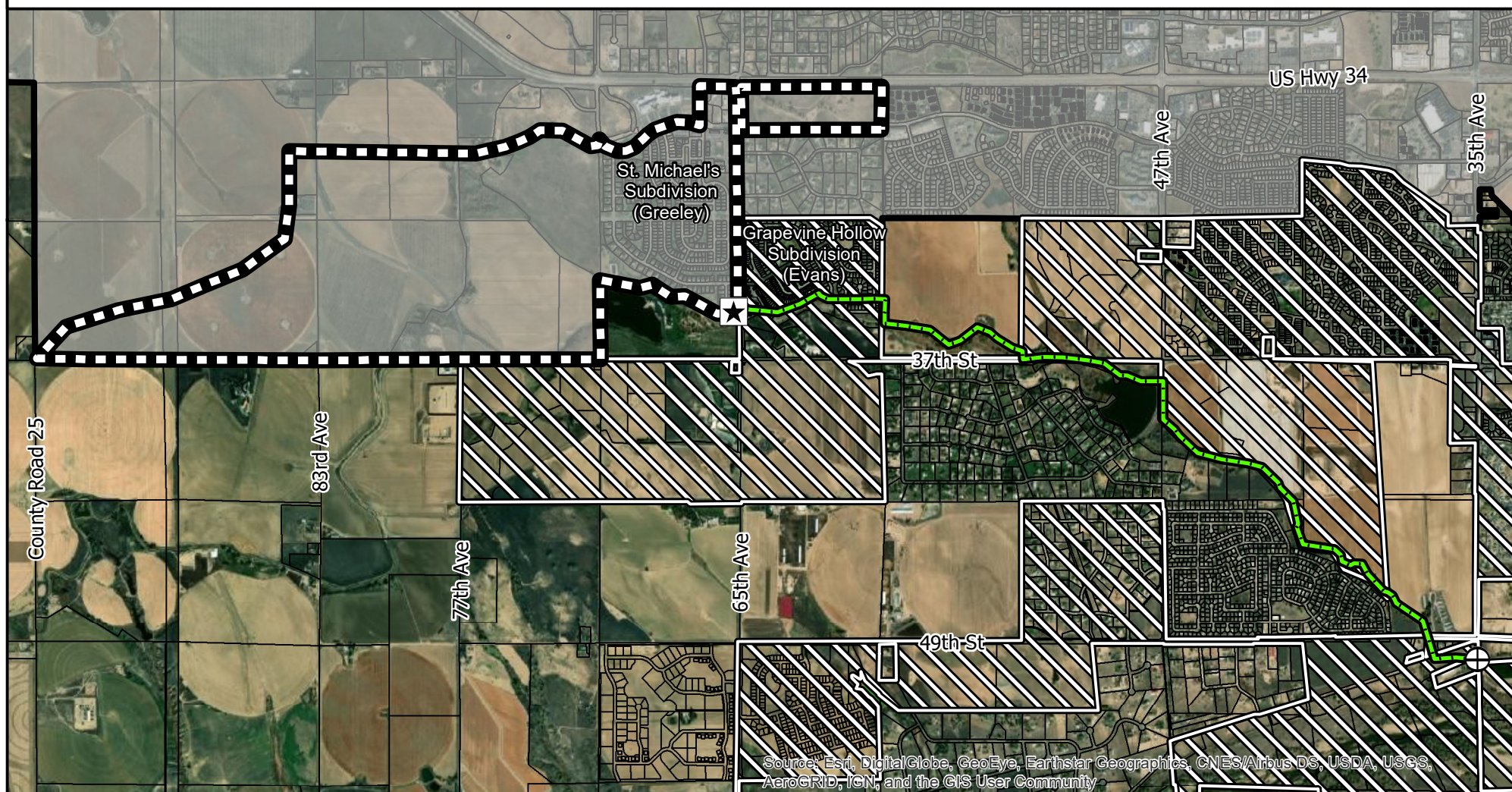


-  Evans City Limits
-  Evans Ashcroft Draw Sanitary Sewer Trunk Line
-  Evans Wastewater Treatment Facility
-  Greeley City Limits
-  Greeley Ashcroft Draw Sanitary Sewer Lift Station
-  Greeley Ashcroft Lift Station Service Area

Date: 7/13/2020

By: Greeley Water & Sewer Department

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Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

IGA Sewer Treatment Services Greeley and Evans (Ashcroft Lift Station)

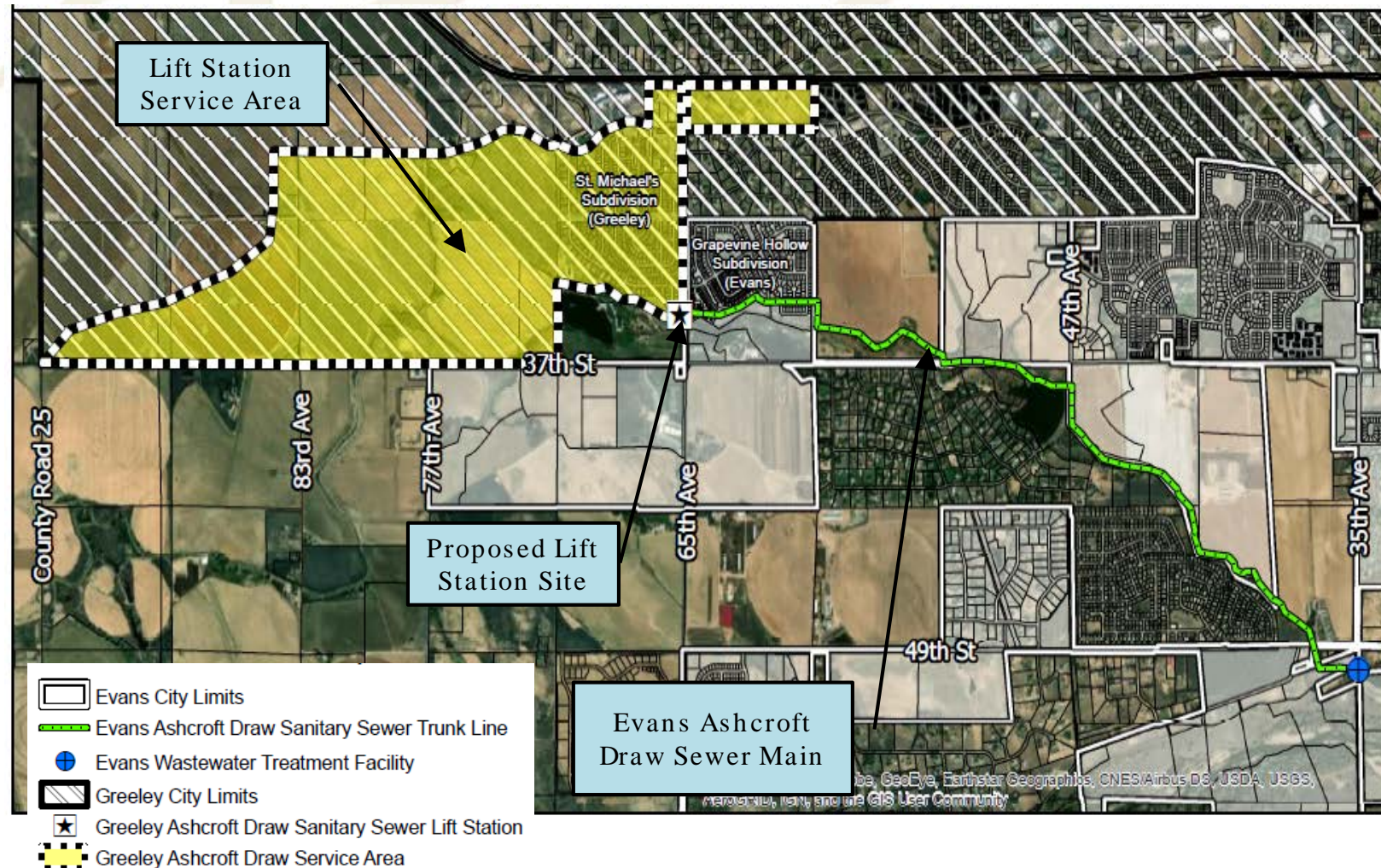
Presented to Water and Sewer Board

April 21, 2021



Lift Station Service Area

- St Michael's Subdivision currently served by Evans, under Existing IGA. (2002)
 - No more than 200 residential taps
 - Additional taps require Evans approval, pending available treatment capacity
 - Evans Treatment Capacity limited new taps within the basin prior to Evans Hill and Park Plant Upgrades (2018)
 - Greeley collects SDC and paid Evans
 - St Michaels residents are Greeley Customers, billed based on Greeley's wastewater rate schedule
 - Greeley W&S pays the difference between Evans rates (\$43/month) and Greeley rates (\$23/month) per bill.
 - New Evans Plant is reaching 80% Capacity (Planning)



IGA Amendment

Proposed Ashcroft Draw Lift Station amendment of the existing IGA

- Prior to Ashcroft Draw Lift Station
 - Grants up to 650 residential taps (approximately 200 new residential taps)
 - System Development Charge(SDC) for new taps paid monthly at 4.17 percent of total SDC (50% of SDC paid in 12 months)
 - After 5-years if Lift Station is not constructed the remaining 50 percent of SDC due.
- After Ashcroft Lift Station
 - Evans to Provide Emergency Overflow Conveyance and Treatment
 - Flow rates measured by Greeley W&S with a new flow meter
- St Michaels Developable Lots and Planned Developments in Service Area
 - Undeveloped Parcels in St Michaels (2) Residential and (1) Commercial Lot
 - 730 Multi Family Units (June 2022 1st Building Permit)
 - Approximately 715 Ac of Undeveloped Land



IGA Benefits and Project Schedule

IGA Benefits

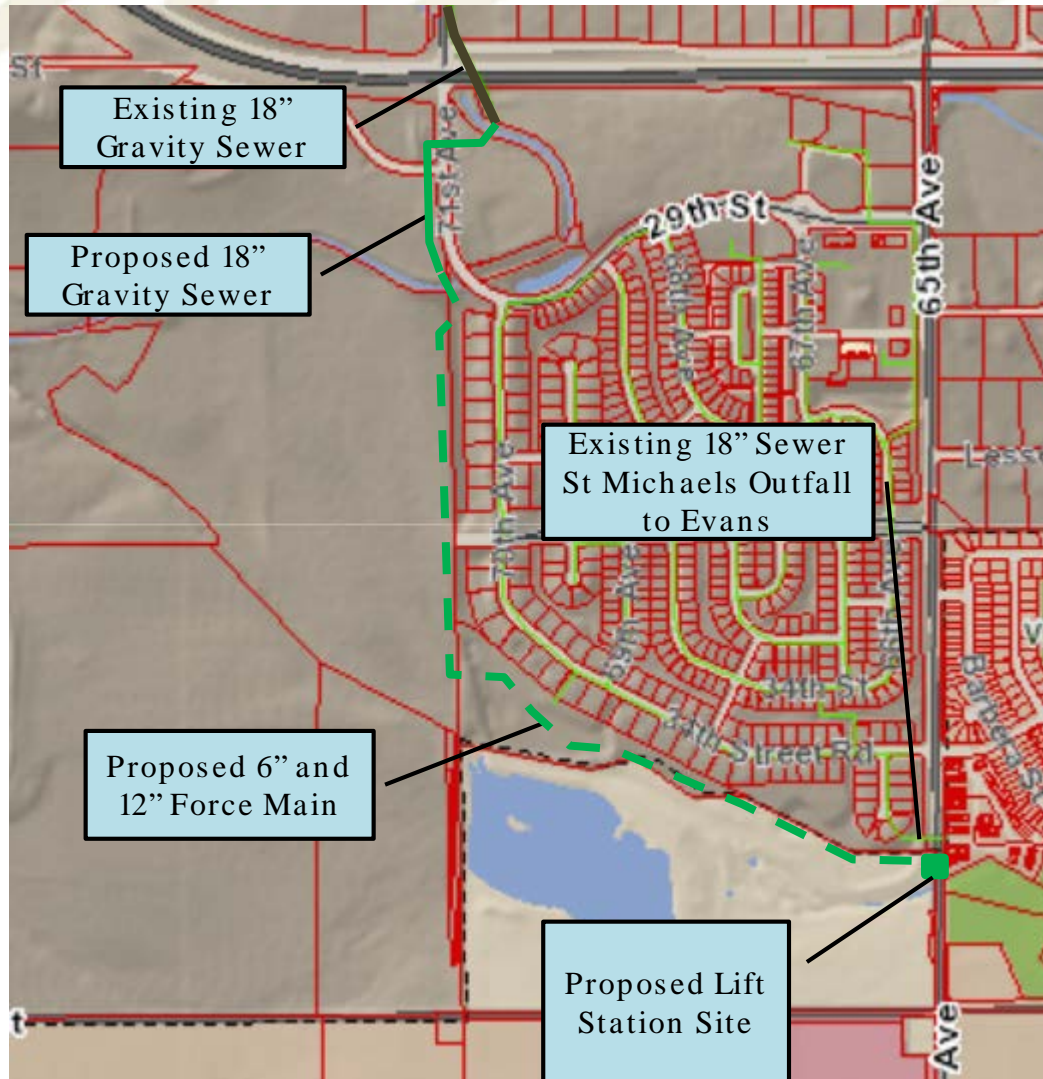
- Increases number of new taps allowed to Evans at a temporary reduced rate
- Permanent Lift Station Emergency Overflow and Operational Flexibility
- Eliminates Onsite Emergency Storage required by CDPHE. A 50'x50'x13' vault difficult fit on the proposed lift station site
- Estimated Cost Savings \$400,000 (No Emergency Storage)

Ashcroft Lift Station Project Schedule

- 90 Percent Construction Drawings - April 2021
- CMAR Guaranteed Maximum Price - May 2021
- Easement and Land Acquisition
 - Negotiated Acquisition – May to June 2021
 - Condemnation - October 2021
- Local Improvement District (LID) Ordinance – June 2021
- Construction start July or land is acquired (7 month duration)



Ashcroft Lift Station Improvements



Lift Station

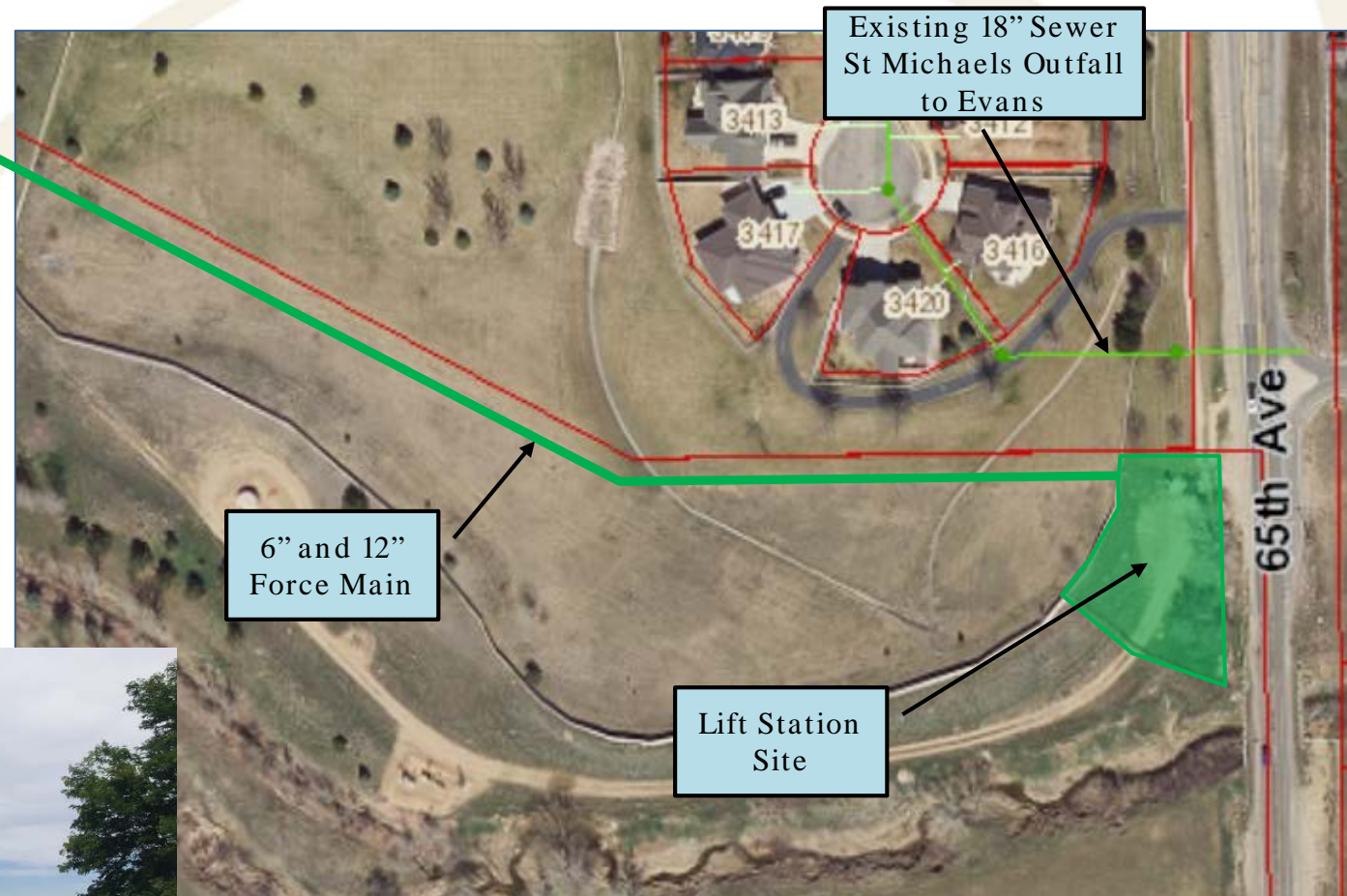
- Below Grade Dry Pit and Wet Pit
- Self Priming Suction Lift Pumps
 - Interim-One Duty and One Standby (1.4 MGD)
 - Build Out-Two Duty and one Standby (2.9 MGD)
- Natural Gas Generator Backup Power
- Emergency Gravity Overflow to Evans (Evans IGA)
- Odor Control - Wet Well Aeration, Carbon Filters
- Telemetry and SCADA

Pipe

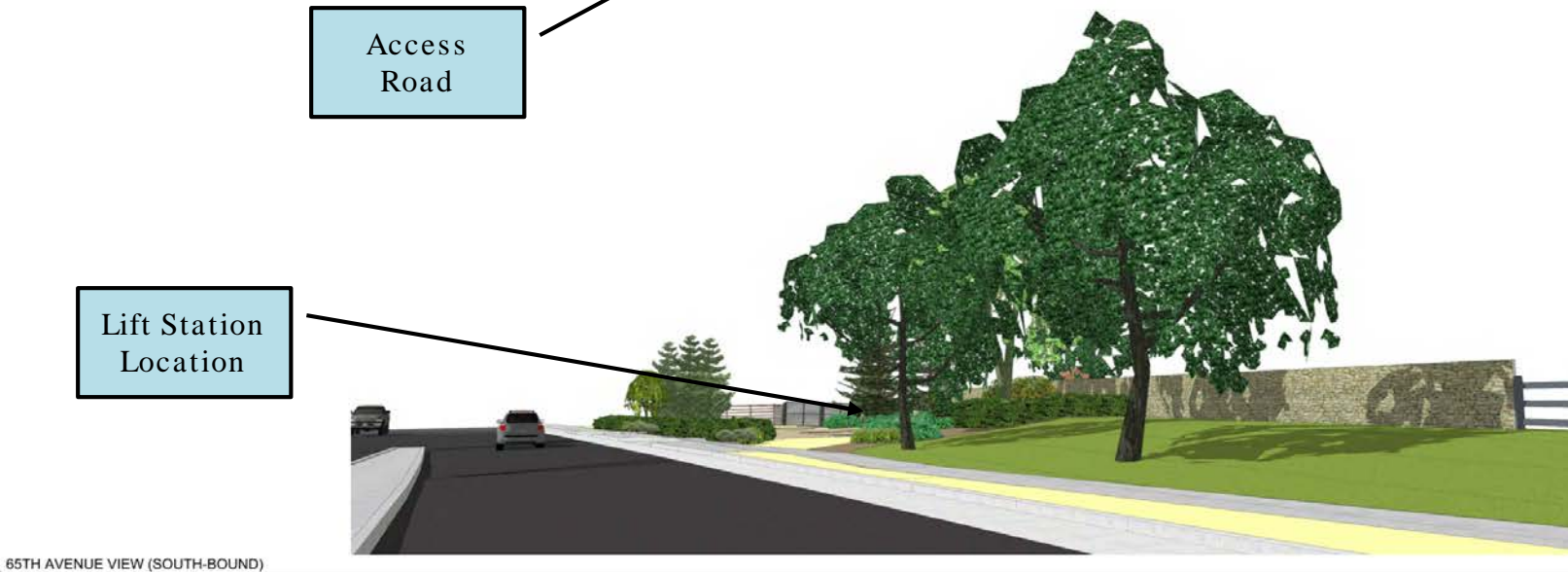
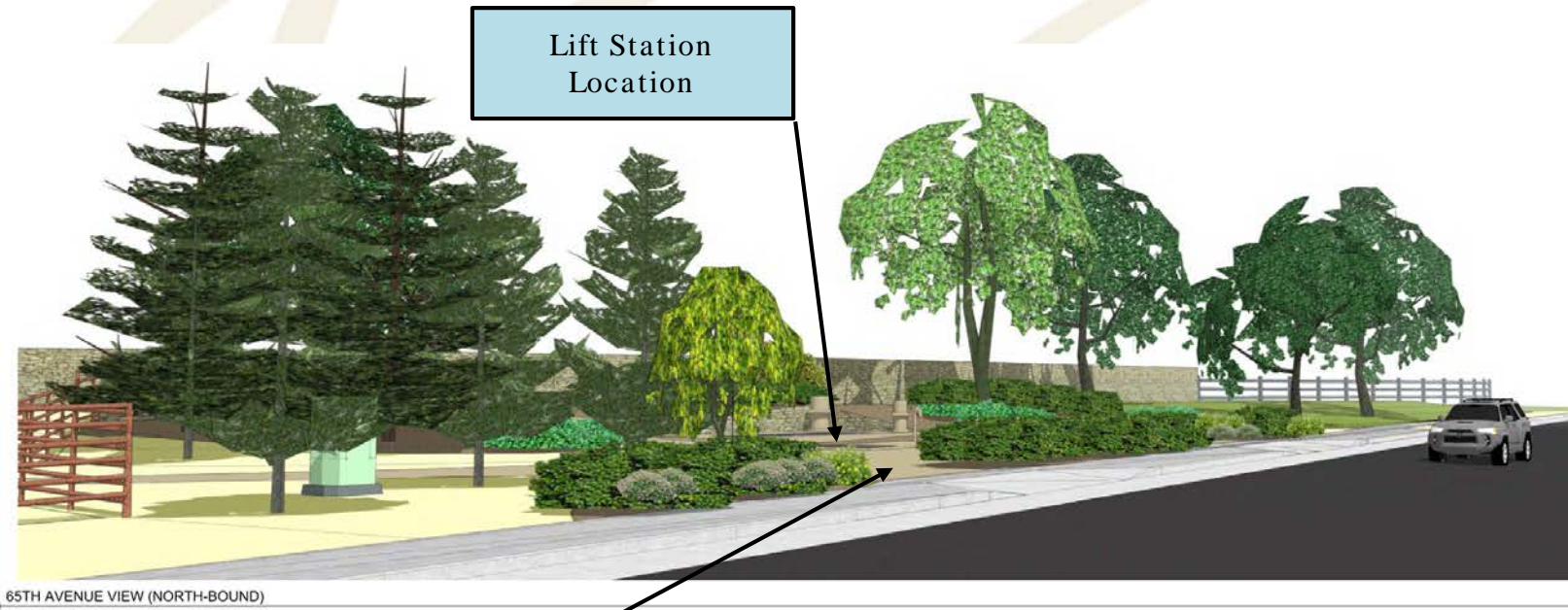
5,400 LF Parallel 6" and 12" PVC Force Mains

1,100 LF of 18" PVC Gravity Sewer





Concept Landscape Plan - Lift Station Site



Recommendation

- Staff recommends that the Water and Sewer Board Approve the 1st Amendment to Intergovernmental Agreement for Sewage Treatment Services and recommend that City Council approve the same.



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

Questions?



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 11

TITLE: APPROVE AND RECOMMEND TO COUNCIL
AN INTERGOVERNMENTAL AGREEMENT
REGARDING REHABILITATION WORK FOR
THE CAMERON PEAK FIRE

RECOMMENDATION: APPROVE AND RECOMMEND TO COUNCIL

ADDITIONAL INFORMATION:

The Cameron Peak Fire was the largest wildfire in CO history burning over 200,000 acres. The estimated costs to mitigate impacts due to erosion, sedimentation, flooding and infrastructure protection is over \$30 million. An intergovernmental agreement to coordinate recovery efforts and costs is needed to effectively complete fire mitigation efforts. This IGA between Greeley, Fort Collins, and Larimer County is intended to meet that need.

**INTERGOVERNMENTAL AGREEMENT
REGARDING REHABILITATION WORK FOR THE CAMERON PEAK FIRE**

THIS AGREEMENT dated _____, 2021, is entered into by and between the following Parties: the City of Fort Collins, Colorado, a Colorado municipal corporation (“Fort Collins”); the City of Greeley, a Colorado municipal corporation (“Greeley”); and Larimer County, Colorado (together, “Managing Entities”).

RECITALS

A. The 2020 Cameron Peak Fire (“Fire”) has burned over 200,000 acres in the watersheds of the Cache la Poudre (“Poudre”) River and Big Thompson River.

B. The Fire has also burned large areas in and impacting private properties, and public infrastructure serving such properties, including roadways, bridges, culverts, and other public service facilities outside of the public right of ways.

C. Greeley and the Water Supply and Storage Company immediately undertook measures to mitigate hazards and damages to drinking water supplies at the Chambers Reservoir.

D. The Managing Entities each divert and treat, and/or take deliveries of water from the Poudre River watershed and the Colorado Big Thompson (“CBT”) Project, and/or maintain public infrastructure supporting private properties located in the basins affected by the Fire.

E. Through the Emergency Watershed Protection Program, administered by the Natural Resources Conservation Service (“NRCS”), United States Department of Agriculture, Greeley and Larimer County separately received funding for post-fire mitigation and infrastructure protection efforts related to the Fire (“EWP funds”).

F. In addition to EWP funds, various funds, grants, programs, and other monetary and other resources may be or become available to assist the Managing Entities to address and mitigate damages from the Fire in the Poudre River and CBT Project watersheds (“non-EWP funds”).

G. Use of EWP funds may be restricted to pre-approved scopes of services and a local government “cost-share”, with EWP funds applied to a percentage of the project’s costs, and the entity(s) awarded the funds being responsible for the remaining percentage. Terms and scopes of services applicable to use of non-EWP funds will be set forth in a separate agreement(s).

H. The Managing Entities desire to coordinate efforts to acquire the most funding possible and to efficiently and effectivity utilize EWP funds to address and mitigate damages from the Fire in the Poudre River and CBT Project watersheds.

I. Greeley and Larimer County agree to be the main contacts and contracting parties for EWP funds.

J. All Parties agree to independently engage other federal and state agencies as practical, for the purposes of seeking and acquiring non-EWP funds, as defined below. As set forth herein, Greeley and Larimer County will coordinate with Fort Collins and other contributing parties to this Agreement to acquire and seek reimbursements under grant and program funding requirements.

K. Fort Collins and other water users that become contributing parties to this Agreement will also contribute matching funds to the cost-share portion of certain projects, as may be required by the terms associated with EWP funds applied under this Agreement.

L. The Managing Entities desire to work with the Coalition for the Poudre River Watershed (“CPRW”), a Colorado nonprofit corporation, to manage certain projects undertaken under this Agreement, as set forth in Paragraph ☐.

M. The Managing Entities also desire to include other impacted water users in these efforts, including water providers and local governmental entities that may desire to become Parties in the future. The pressing need for this Agreement, and the shifting nature of Fire impacts have made it difficult for these other water users and entities to complete their internal evaluations and processes regarding whether to become a Party. Consequently, this Agreement includes a process to add “Contributing Parties” to this Agreement.

N. The Managing Entities desire to enter into an intergovernmental agreement to coordinate emergency stabilization and restoration services, e.g., hillslope mulching, debris catchment systems, vegetation matting, seeding, rock netting, on the targeted public and private lands burned by the Fire.

O. The Managing Entities wish to record their mutual understanding in intergovernmental agreements.

P. The Managing Entities enter this into agreement pursuant as permitted §29-1-203, C.R.S.

Q. Pursuant to Art. II, § 16 of the Fort Collins City Charter, the Fort Collins City Council, may, by ordinance or resolution, enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies.

R. Pursuant to Section 02.07.040, Greeley Municipal Code, Greeley may enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies, the entry into such contracts being subject to the approval of the Greeley City Council under certain circumstances.

S. The authority for this Agreement is, without limitation, Section 18 of Article XIV of the Colorado Constitution; Section 6 of Article XX of the Colorado Constitution; Section 29-1-203,

C.R.S., and provisions of the Colorado Disaster Emergency Act, Section 24-33.5-701, et seq., C.R.S., as amended.

T. It is in the best interest of the citizens of Fort Collins, Greeley, and Larimer County for the parties to enter into this intergovernmental agreement.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, it is agreed by and between Fort Collins, Greeley, and Larimer County as follows:

AGREEMENT

1. **AUTHORITY.** This Agreement has been duly adopted by the Parties' governing bodies and the undersigned representatives are authorized to execute this Agreement on behalf of each respective Party.

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

3. **PARTIES TO THIS AGREEMENT.**

3.1. **Principals.** For purposes of completing the work described in this Agreement, portions will be delivered within the scopes of the respective funding award contracts secured by Greeley and Larimer County, and each funding recipient will take the lead in preparing and submitting reimbursements for costs associated with such work, as follows:

1. Category 1 – watershed work. Greeley will take the lead for purposes of initiating access to EWP funds and establishing the initial scope of qualifying watershed work, including hillslope and stream channel stabilization, erosion control, water supply infrastructure protection, and water quality work.

2. Category 2 – property and infrastructure work. Larimer County will take the lead for purposes of initiating access to EWP funds and establishing the initial scope of qualifying services for addressing impacts to private residences, roads, bridges, culverts and other public facilities outside of the public right of ways.

3. The Managing Entities will share responsibilities for mutually beneficial portions of qualifying Category 1 and 2 services and coordinating with third party project management services for Category 1 work.

3.2. **Addition of Parties.** Any other water user or local agency in the Poudre River watershed or that takes delivery of CBT Project water may become a “Contributing Party” to this Agreement by completing the Schedule of Participants addendum to this Agreement in the form of Exhibit B to be signed by all Parties.

3.3. **Withdrawal of Parties.** Any Party may withdraw itself from this Agreement by providing written notice pursuant to Paragraph 12. The withdrawing Party shall continue to be responsible for any commitments or contributions made prior to withdrawal.

4. **FUNDING.**

4.1. **EWP Technical Assistance Funds.** The EWP Sponsors, Greeley and Larimer County, will initially pay costs associated with NCRS-approved Technical Assistance Work under this Agreement, initial estimates for which and the associated work scoped are set forth in Exhibit A, attached hereto ("TA Funds"). EWP Sponsors may also pursue additional TA Funds for work later approved by NRCS, the work scopes for which will be incorporated in Exhibit A as amendments. Costs associated with approved TA Funds Work are ultimately 100% reimbursable.

4.2. **EWP Construction Funds.** In 2020, NRCS also awarded Financial Assistance funds ("FA Funds") to Greeley and Larimer County, respectively, for aerial mulching and enhanced mitigation efforts. Initial FA Funds awards and the associated work scopes approved by NRCS are set forth in Exhibit A.

4.3. **Local Matching Funds.** Under the respective FA Funds notices of award (a/k/a EWP funds) the Parties are required to expend certain local matching funds, anticipated to be 20 percent of the EWP funds. The Parties anticipate total funding for the Work during the Term will increase from the initial amount described in Exhibit A, as additional EWP funds become available, Contributing Parties join this Agreement, and project work orders are developed.

4.4. **Other funding.** The Parties may also pursue non-EWP funds and resources to complete projects associated with the Work, the costs for which the Parties will work in good faith to equitably share, based on a "percent of Poudre River water use" cost-share model, or as may be identified in separate agreements for such projects and as referenced in amendments to Exhibit A.

5. **APPORTIONMENT OF COSTS AND DUTIES.**

5.1. **Project Cost Allocation.**

1. Project costs will be allocated as follows for individual projects the Parties agree to pursue under this Agreement:
 - EWP funds will be used first to the maximum extent possible towards project costs, including submittal of reimbursement applications against the initial NRCS award amounts described in Paragraph 4;
 - Any remaining costs will be allocated among the Managing Entities that would benefit directly and indirectly from the project, according to criteria mutually agreed to by the participating parties at the time of project commencement ("Benefit Cost Allocation Methodology").
2. For projects Greeley agrees to pursue directly with Contributing Parties who are also water service users, project costs will be allocated based on the

participating parties' respective average annual percent municipal diversions from the Cache La Poudre river for the years 2015 to 2019 ("Water User Cost Allocation Methodology").

5.2. Category 1 Project Management.

1. Greeley may advertise and request bid proposals ("Proposal") for post-fire aerial mulching services and other post-fire mitigation services for Category 1 Work, and Greeley and Fort Collins will select a general contractor based on the criteria set forth in the Proposal.
2. Upon selection of a general contractor to perform the designated Category 1 Work, Greeley shall execute a contract with the selected general contractor ("Cat 1 Contract") and will be identified as the owner therein for such projects, which may include work designed by or with a shared benefit for Fort Collins and/or Larimer County.
3. As specified in the terms of the Cat 1 Contract, the selected general contractor will first invoice Greeley directly, up to and not to exceed any amount to which Greeley has agreed pursuant to an executed NRCS notice of award, for the designated Category 1 Work. After receiving EWP reimbursements, Greeley will divide non-reimbursable Category 1 Work project costs among the project partners, including Fort Collins and benefited Contributing Parties, pursuant to either the Benefit or Water User Cost Allocation Methodology as appropriate.

5.3. Category 2 Project Management.

1. Larimer County may advertise and request bid proposals ("Proposal") for post-fire aerial mulching services and other post-fire mitigation services for Category 2 Work and will select a general contractor based on the criteria set forth in the Proposal.
2. Upon the selection of a general contractor to perform the designated Category 2 Work, Larimer County shall execute a contract with the selected general contractor ("Cat 2 Contract") and will be identified as owner therein for such projects, which may include work designed by or with a shared benefit for county partners.

6. **PROJECTS.** The projects ("Work") performed under this Agreement and subject to the EWP fund reimbursement conditions shall fall within the objectives outlined in the scope of services and contract between the local government entity and NRCS, as described in Exhibit A, attached hereto, and incorporated by this reference. Reimbursement obligations for such Work shall be subject to cost distributions and conditions set forth in the respective funding contract. Any (additional) Work requested by a Party that NRCS may subsequently approve for reimbursement with EWP funds will be set forth in an amendment to Exhibit A.

7. **PROJECT PLANNING.**

7.1. **Decision Making.** In making decisions on which projects fall under Category 1 or Category 2 to pursue and the allocation of project costs, the Parties shall operate by consensus. To this end, the Parties 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 Parties' lands or structures may only be made with the consent of that Party in its sole discretion.

7.2. **Project Identification and Prioritization.** The Parties will identify potential projects on which to use the EWP funds. The Parties' identification of potential projects and the order in which they are taken on and completed will be guided by the following considerations:

- The need and expected benefit of the project;
- The entities that would benefit directly and indirectly from the project;
- The cost of the project, including whether EWP funds can be applied towards the project's costs;
- Accessibility of the project location; and
- Administrative, legal, and/or regulatory steps associated with the project, including receiving approval for the project to be eligible for funds, such as necessary permits; and

7.3. **Project Selection.** For projects the Parties agree to pursue under this Agreement, Greeley and Larimer County will provide a written summary, including: a description of the project work; a timeline; and the project cost allocation ("Project Summary"), which may be initially prepared by a third-party contractor. A scope of work provided by the contractor hired to undertake such project may be used as the Project Summary, if it contains the information described in this paragraph.

- **Category 1 Projects:** Greeley will circulate a draft Project Summary to the Contributing Parties for review and comment. Greeley and the Contributing Parties must mutually approve the Project Summary in writing prior to project commencement. After the Project Summary is approved, Work may commence, and as projects under this Agreement are completed, Greeley will invoice the Contributing Parties for project costs not reimbursed by EWP funds, according to the Project Summary. Greeley will prepare an annual work summary for projects completed under this Agreement and submit the summary to the Parties by December 31. The annual summary will exclude any projects that Greeley or Larimer County take on independently or without involvement of other Parties.
- **Category 2 Projects:** Larimer County will circulate a draft Project Summary to the Contributing Parties for review and comment. Larimer County and the Contributing Parties must mutually approve the Project Summary in writing prior to project commencement. After the Project Summary is approved, Work may commence, and as projects under this Agreement are completed, Larimer County

will invoice the Contributing Parties for project costs not reimbursed by EWP funds, according to the Project Summary. Larimer County will prepare an annual work summary for projects completed under this Agreement and submit the summary to the Parties by December 31. The annual summary will exclude any projects that Greeley or Larimer County take on independently or without involvement of other Parties.

8. **CPRW PROJECT MANAGEMENT.** Greeley and Fort Collins may secure project management (PM) services through the Coalition for the Poudre River Watershed (“CPRW”) to coordinate post-fire project implementation and ensure the Work is completed. The terms of CPRW’s engagement will be documented in a separate agreement, under which Fort Collins will reimburse Greeley for a portion of the PM costs. Greeley and Fort Collins may choose to maintain and oversee CPRW’s delivery of PM services through resources employed directly by CPRW. The initial focus of the PM service will be EWP fund Category 1 projects, with accommodation for other priorities identified in this Agreement as resources and funding conditions may permit.

9. **OTHER FIRE-RELATED EFFORTS.** Nothing in this Agreement shall impact the ability of any Party to perform other activities to address and mitigate damages from the Fire in the Poudre River and CBT Project watersheds, including efforts with affiliated local agencies affected by the Fire that may seek to coordinate with Work performed under this Agreement, e.g., City of Fort Collins Natural Areas.

10. **FISCAL CONTINGENCY.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the governmental Parties in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with each governmental Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement, and the failure of any governmental Party to appropriate such funds shall be grounds for the Party to withdraw from this Agreement with written notice pursuant to Paragraph 12.

11. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into among 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.

12. **NOTICES.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, or after the lapse of five business days following mailing by certified mail-return receipt requested, postage prepaid, addressed as follows:

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
Fort Collins, Colorado 80521
ddustin@fcgov.com

To Greeley:

Greeley Water and Sewer Department
Attn: Director of Water and Sewer
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
sean.chambers@greeleygov.com;
jennifer.petrzelka@greeleygov.com

With a copy to:

Greeley City Attorney's Office
Attn: Environmental and Water Resources
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

To Larimer County:

County Manager
200 W. Oak Street
Fort Collins, CO 80522

With copy to:

Office of Emergency Management
Attn: Director OEM
200 W. Oak Street
Fort Collins, Colorado 80522

13. **NO WAIVER OF IMMUNITY. NO WAIVER OF IMMUNITY.** Nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10-101, et seq., or the Federal Tort Claims Act ("FTCA") 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement. Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the CGIA or the FTCA as applicable, as now or hereafter amended.

14. **NON-LIABILITY AND INSURANCE-GENERAL.** This Agreement shall not be construed to create a duty as a matter of law, contract, or otherwise for any Party to assume any liability for injury, property damage, or any other loss or damage that may occur by any action, or non-action taken, or service provided, to the public or any person, as a result of this Agreement. Each Party shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property as a result of any act or omission of a Party, or its employees, agents, or assignees pursuant to the terms of this Agreement, Each Party retains all obligations and

protections afforded by the provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et. seq., as the same may be amended from time to time.

15. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, except for conflicts of laws provisions. The forum for any dispute regarding this Agreement shall be in the Weld County District Court, State of Colorado.

16. **CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was prepared by the Parties. 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.

17. **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. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

18. **AMENDMENTS.** Any amendments or modifications to this Agreement must be in writing and executed by all parties to be valid and binding.

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

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

21. **SEVERABILITY.** If any provision of this Agreement shall be found illegal, invalid, unenforceable, or impossible to perform by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation

By: _____
Darin Atteberry, City Manager

Date: _____

ATTEST:

City Clerk's Office
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Printed Name: _____
Assistant City Attorney

CITY OF GREELEY, COLORADO, a home rule municipal corporation

By: _____
Roy Otto, City Manager

Date: _____

AS TO LEGAL FORM:

By: _____
City Attorney

AS TO AVAILABILITY OF FUNDS:

By: _____
Director of Finance

LARIMER COUNTY, COLORADO, a county subdivision of the State of Colorado

By: _____
Chairman of Board of County Commissioner

Date: _____

AS TO LEGAL FORM:

By: _____
County Attorney

AS TO AVAILABILITY OF FUNDS:

By: _____
Director of Finance

Exhibit A
Scope of Coordinated Services

Greeley and Larimer County intend to use EWP funds for the implementation of recovery measures, which left undone, pose a threat to life and or property. Example recovery projects may include, but are not limited to, erosion and sedimentation prevention, debris removal, and structure protection from the threat of future flooding due to the Cameron Peak Fire.

Examples of Project Types:

I. Direct Remediation

a. Category 1 services.

- Mulching of hillslopes
- Hillslope stabilizations such as waddles, tree welling, etc.
- Sedimentation basins
- Erosion Control Measures
- Stream Channel Stabilization
- Seeding/ Revegetation / Reforestation

b. Category 2 services.

- Repair or upgrades to culverts, bridges, and roads
- Debris removal
- Flooding prevention structures
- Hazard Tree Removal
- Hillslope protection / stabilization
- Warning Signage
- Stream channel stabilization
- Seeding/ Revegetation / Reforestation

II. Project Management

As needed, Greeley and Fort Collins will jointly select and coordinate through Greeley a third-party project manager (“PM Work”) to oversee organization of Projects under this Agreement and related work, including Category 2 services for which Larimer County may be involved. The Managing Entities will equitably apportion the cost of PM Work, based on the respective benefits realized by the Parties, to be paid from individual resources without seeking NRCS reimbursement.

Exhibit B
Participating Parties

The following local governmental entities are the principal parties to this Agreement, “Managing Entities”:

- CITY OF FORT COLLINS, COLORADO a home-rule municipality (“Fort Collins”) with principal offices at 300 LaPorte Avenue, Fort Collins, Colorado 80521
- CITY OF GREELEY, COLORADO, a home-rule municipality (“Greeley”) with principal offices of its Water and Sewer Department at 1001 11th Avenue, Second Floor, Greeley, Colorado 80631
- LARIMER COUNTY, COLORADO, a county subdivision of the State of Colorado (“Larimer County”) with principal offices at [...], Fort Collins, Colorado [...]

The following entities are Contributing Parties to this Agreement, whose obligations and contributions to the Work described in this Agreement may be different than those of the Managing Entities, as set forth in addenda to this Exhibit B:

- _____, with principal offices at [...]
(Organization Name)
- _____, with principal offices at [...]
(Organization Name)

(Form of Addendum to Add a Party)

CONTRIBUTING PARTY ADDENDUM TO
AGREEMENT REGARDING REHABILITATION WORK
FOR THE CAMERON PEAK FIRE

This Addendum, dated _____, 2020, is entered into by and between the Parties to the Agreement Regarding Rehabilitation Work for the Cameron Peak Fire (“Agreement”) and _____, a _____ (“New Party”).

1. The New Party has reviewed the Agreement as desires to become a “Contributing Party” thereto. The Parties to the Agreement agree to permit the New Party to become a Contributing Party to the Agreement for purposes of the following ☐ Category 1; ☐ Category 2 services:

[...]

2. The New/Contributing Party represents to the other Parties that it has the power and authority to enter into this Agreement and the individuals signing below on behalf of the New/Contributing Party have the authority to execute this Agreement on its behalf and legally bind the New/Contributing Party.

3. For purposes of Paragraph 12 of the Agreement, the contact information of the New/Contributing Party is:

To _____:

_____, a _____

By: _____

Date: _____

[Insert signature pages of other Parties]

Cameron Peak Fire IGA



Water & Sewer
Board
April 21, 2021



Cameron Peak Fire IGA

- IGA is needed to coordinate and cost share fire mitigation work
 - Greeley, Fort Collins, and Larimer County
 - Option for other parties to join
- 6,000-10,000 acres need mitigation
- Minimum \$35 million in costs
- Seeking funding options but will likely need to pay a portion



IGA Terms

- Greeley and Larimer County will contract and manage Emergency Water Protection (EWP) program funding
 - Greeley is lead for watershed needs
- Non-EWP sponsors agree to reimburse Greeley cost share expenses
- All parties agree to seek and contribute additional funds (state, private, federal)



IGA Terms

- Work includes watershed, property, and infrastructure work
- Project costs will be determined based on consensus for mutually beneficial projects (percent diversions)
- Will fund project management through Coalition for Poudre River Watershed



Recommendation

- Staff recommends approval and recommendation to Council of the Intergovernmental Agreement Regarding Rehabilitation Work for the Cameron Peak Fire



Questions



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 12

TITLE: APPROVE NON-AGRICULTURAL WATER
RENTAL POLICY

RECOMMENDATION: APPROVE THE NON-AGRICULTURAL
WATER RENTAL POLICY

ADDITIONAL INFORMATION:

Pursuant to the *City of Greeley Agricultural Rental Policy and Procedures* approved by the Water & Sewer Board in December 2019, up to 15% of the city's total annual excess rental supplies may be used for non-agricultural purposes. Non-agricultural rentals can be made to supply augmentation, industrial water needs, home owner association irrigation, or other uses unrelated to agricultural use. The attached policy proposes a process for requesting and approving non-agricultural water rentals from Greeley; it defines sources of rental water for non-agricultural uses; it specifies terms of delivery; and it sets prices based on various types of non-agricultural use. Staff recommends the Board approve the policy as presented.



CITY OF GREELEY NON-AGRICULTURAL WATER RENTAL PROGRAM POLICY

April 21, 2021

The City of Greeley manages a non-agricultural water rental program that provides annual excess water supplies to certain non-agricultural water users. Up to 15% of the city's total annual excess rental supplies may be used for non-agricultural purposes. Non-agricultural rentals can be made to supply augmentation, industrial water needs, home owner association irrigation, or other uses unrelated to agriculture. This policy outlines the procedure for requesting and approving non-agricultural water rentals from Greeley; it defines sources of rental water for non-agricultural uses; it specifies terms of delivery; and it sets prices based on various types of non-agricultural use. Greeley also manages an annual agricultural water rental program that is described on the city's website at greeleygov.com/water-rental.

Sources Available and Delivery Locations

The following water sources are available for non-agricultural rentals:

- Wholly consumable wastewater effluent from Greeley's wastewater treatment plant.
 - Delivery shall be at the outfall of the wastewater treatment plant located on the lower Poudre River.
 - Wastewater effluent is useable for all non-agricultural purposes.
- Greeley-Loveland Irrigation (GLIC) supplies.
 - Delivery shall be made to the Big Thompson River at one or more GLIC release structures. Contact the Water Resources Operations Manager for a list and location of available GLIC release structures.
 - GLIC supplies are usable for all non-agricultural purposes.
- Colorado-Big Thompson (CBT) units.
 - Delivery shall be made at any structure operated by the Northern Colorado Water Conservancy District ("Northern Water") to which Greeley has rights to release water and during such times CBT delivery structures are in operation; or may be assigned to any CBT allottee or to the holder or manager of allottee contracts through an account with Northern Water.
 - CBT supplies are usable for all non-agricultural purposes **except augmentation**.



It is the responsibility of the renter to coordinate with the State Engineer's Office ("SEO"), ditch companies, and any other third parties to deliver non-agricultural rental water to its desired delivery location(s) following release from the above Greeley delivery locations. Renters shall pay all shrinkage as determined by the SEO to deliver Greeley's water. Greeley shall not be responsible for bypassing any dry-up points.

Pricing

Revenue from non-agricultural rentals are used to offset operational costs to Greeley water customers. Rates will be evaluated and adjusted annually. The following rates apply for one year commencing April 21, 2021. All non-agricultural rentals shall incur an administrative fee equal to 10% of the total rental cost, not to exceed \$500.

- Industrial use: \$800 per acre-foot
- General augmentation use: \$800 per acre-foot.
- Augmentation use for the purpose of meeting depletions caused by agricultural irrigation (e.g. irrigation well augmentation): \$200 per acre-foot.
 - For agricultural augmentation, renter shall provide Greeley a description of agricultural use, well location, number of acres in irrigation, crop type, and other information deemed necessary by the Water Resources Operations Manager
- CBT use: \$500 per acre-foot

On August 1st of each year, the Water Resources Operations Manager may reduce the above prices if she/he determines there is excess supplies that Greeley may spill if not used by November 1st. In this situation, rental rates will decrease by 25% or more.

Rental Request Process

Non-agricultural rental requests will be considered year round and must be presented to the Water Resources Operations Manager via email or phone. The maximum length of a rental that can be requested is 12 months. The request must specify:

- Name
- Company (if applicable)
- Phone number
- Email address
- Billing address
- Requested volume in acre-feet



- Use for the water (augmentation, industrial, municipal, etc.)
- Location of water delivery Schedule (if applicable)

Rentals can be made in a single volume transfer or as long-term delivery, not to exceed 12 months. For long-term rentals, a delivery schedule is required:

- Delivery schedules are required to be fixed daily rates in acre-feet per day.
- Exceptions to fixed rates will be considered if the renter provides at least 60 days' notice and changes are no greater or less than 10 acre-feet in any month.

Rental Approval Process

- City staff will evaluate the Greeley's water system operations and supplies for the amount and schedule provided to determine if city can meet the request. The amount of available annual excess water supplies will be determined for the coming water year at the April Water and Sewer Board meeting.
- Requests for non-agricultural water are approved at the discretion of the Water and Sewer Director or Water and Sewer Board for economic partners and priorities in the South Platte Basin.
- Rental requests shall be confirmed or denied no sooner than **10 business days** after the request is made. If staff determines your rental request can be met you will be contacted by phone or email.
- Once you are contacted, you have **48 hours** to confirm that you still wish to rent the water requested, or make modifications to that request.
- Once you confirm your request with the Water Resources Operations Manager, she/he will send you a letter confirming the request along with an invoice.
- Renters must pay for the invoiced total within the sooner of 30 days following city confirmation or 10 days of the first requested delivery date. No refunds will be issued for unused water.

Non-Agricultural Water Rental Policy

April 21, 2021



Background

- Department priority – standardize policies for water resource operations. Examples:
 1. *Agricultural Water Rental Program Policy* (December 2019). Set process and price for annual agricultural rentals.
 2. *Agricultural Water Lease Policy* (March 2020). Set terms and conditions for long-term water-only and water and farm leases.
 3. *Standardized acquisition documents* (2020). Created template forms for purchase and sale agreements, leases, and dry-up and revegetation covenants.

Background

- Agricultural rental policy allows 15% of available annual rental supplies to be rented for non-agricultural purposes
 - Augmentation, industrial use, other water providers, etc.
 - For economic partners and priorities within South Platte Basin
 - Authorized by W&S Board and/or W&S Director
- Standardized process and price needed



Proposed Policy

- Outlines rental request and approval processes
- Defines sources available and delivery locations
- Sets prices:
 - Industrial and general augmentation: \$800 per acre-foot
 - Augmentation for agricultural irrigation (e.g. well augmentation): \$200 per acre-foot.
 - CBT: \$500 per acre-foot (cannot be used for augmentation)
 - ~10x price of agricultural rentals



Recommendation

Staff recommends the Water & Sewer Board adopt the Non-Agricultural Water Rental Program Policy as presented





Questions?



WATER & SEWER BOARD AGENDA APRIL 21, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 13

TITLE: PRESENTATION AND OVERVIEW OF
 PRETREATMENT PROGRAM
 MODIFICATIONS

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- SUBSTANTIAL MODIFICATIONS TO THE PROGRAM
 - AMEND IPP ENFORCEMENT RESPONSE PLAN (ERP)
 - REFORMATTED TO ALLOW ENFORCEMENT RESPONSES TO BE APPLIED MORE BROADLY.
 - BENEFICIAL TOWARDS USER UNDERSTANDING OF ENFORCEMENT ACTIONS
 - AMEND PROGRAM IMPLEMENTATION PROCEDURES
 - CLARIFY USER CLASSIFICATION AND SURVEY PROCESSES
 - MODIFY WASTEWATER DISCHARGE PERMIT TEMPLATE
 - CHANGED TIMING OF INDUSTRIAL/COMMERCIAL USER SURVEY DISTRIBUTION
 - AMEND CITY ORDINANCE 14.11 (PRETREATMENT CHAPTER)
 - UPDATE PRETREATMENT CHAPTER TO ACHIEVE THE FOLLOWING:
 - AMEND IPP RELATED DEFINITIONS TO BETTER ALIGN WITH FEDERAL DEFINITIONS (I.E. SLUG LOADS, USER, SLUG DISCHARGE CONTROL PLAN);
 - UPDATES ALIGNING THE ORDINANCE WITH CURRENT IMPLEMENTATION OF THE IPP (APPEAL HEARINGS AND PERMITTING);
 - MODIFIED ALLOWABLE CORRESPONDENCE METHODS TO SIMPLIFY SUBMITTAL PROCESS (INTERNAL MODIFICATION);

- CORRECT MINOR CLERICAL ERRORS (INTERNAL MODIFICATION)
- IMPLEMENTATION TIMELINE

City of Greeley, Colorado

Industrial Pretreatment Program

Substantial Modification Submittal

1.1.1 Statement of Basis

On ~~February–August 10-19, 2020~~^{27-29, 2012} the Environmental Protection Agency (EPA) conducted a Pretreatment ~~Program Audit~~^{Compliance Inspection (“PCI”)} of the City of Greeley’s ~~Water Pollution Control Facility~~^{Wastewater Treatment and Reclamation Facility (“WTRF”)}. By letter dated ~~April 16, 2012~~^{September 30, 2020}, and received by the City on ~~April 19, 2012~~^{September 30, 2020}, EPA transmitted to Greeley a report that identifies program components that the City was recommended or required to implement in order to effectively operate its pretreatment program and/or to meet its regulatory requirements.

Two specific requirements/recommendations of the EPA ~~audit~~^{PCI} performed in ~~2012~~²⁰²⁰ were:

~~• Conduct and submit a technical evaluation of its local limits by January 1, 2013, and implement new limits, if necessary, by January 1, 2014. In addition, the audit recommended further evaluation of the MAHL allocation strategies as a result of updating information or corrections to the local limit input data.~~

Revise Greeley’s legal authority ~~definition for slug discharge included the City’s ordinance does not appear equivalent to the definition found at 40 C.F.R. §403.8(f)(2)(vi). to include general permitting authority via Best Management Practices (BMP) based sector control programs.~~ ^{Other minor language} modifications to Greeley’s legal authority were recommended.

• Revise the City’s program procedures and Enforcement Response Plan (“ERP”) that may inhibit consistent program implementation

The resulting technical evaluation of Greeley’s local limits identified the following local limit input data which needed updating:

- ~~• Update the following existing local limit input data (2005-2007) with (2008-2011) data from the technical evaluation of 2012 for the following areas:~~
 - ~~• Chronic and acute low flow of receiving stream~~
 - ~~• Acute CDPS limit for Arsenic~~
 - ~~• Acute State WQS for Cadmium~~
 - ~~• Acute State WQS for Zinc~~
 - ~~• Chronic State WQS for Arsenic~~
 - ~~• Chronic State WQS for Cadmium~~
 - ~~• Chronic CDPS limit for Zinc~~
 - ~~• POC Removal Efficiencies~~
 - ~~• Domestic/Commercial loading~~

The local limits were recalculated and various MAHL and MAIL allocation strategies were calculated and reviewed. Ultimately a conventional uniform concentration based limit strategy was applied to the MAIL. The proposed local limits are submitted with this modification package.

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Also submitted are revisions to the Greeley Pretreatment Ordinance that incorporate minor ordinance language modifications as follows:

Several Definition changes and additions that changed those wordings throughout the chapter the new local limits and general permitting authority to IU's in the following sectors:

- Several enforcement wording changes
- Deletion of any references to required notifications via Certified Registered USPS Mail
- Report submittal timing clarification calendar days/working days
- Minor changes to permitting requirement wording and timing
- Several enforcement wording changes

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Also submitted are are Sections 4 and 5 modifications to Greeley's Pretreatment Program Document that include modifications to the User Identification and Classification Procedures (Section 4), and Program Implementation Procedures (Section 5) —Fats, Oils and Grease (FOG) Sector Control Program applicable to food service establishments

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- Petroleum Oils and Grease and Sand Interceptors (POGS) Sector Control Program applicable to automotive repair and maintenance facilities
- Silver Sector Control Program applicable to photo and x-ray processing facilities and printing facilities
- Mercury Sector Control Program applicable to industrial users
- Emerging Contaminants Sector Control Program applicable to industrial users

A copy of the modified ERP is included in Section 5, but is also submitted separately. In addition, the revised Wastewater Discharge Permit Template and Permit Fact Sheet are submitted. In addition, minor ordinance language modifications to the medical waste definition, hauled industrial waste regulation and sample collection requirements and procedures are submitted.

City of Greeley, Colorado
Industrial Pretreatment Program
Substantial Modification Submittal

1.1.2. Attorney's Statement **[NEEDS UPDATING]**

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DRAFT



July 17, 2013

Mr. Al Garcia
Pretreatment Coordinator
USEPA - Region 8
Industrial Pretreatment Program (8P-W-WW)
1595 Wynkoop
Denver, CO 80202-1129

**RE: Attorney's Statement on Legal Authority for City of Greeley, Colorado
Industrial Pretreatment Program Submittal Package.**

Dear Mr. Garcia:

This office is legal counsel for the City of Greeley ("City") and its Water Pollution Control Facility ("WPCF"). The City is in the process of amending its Municipal Code to provide for general permitting and sector control programs. The amendments are to produce a more streamlined permitting process and provide a targeted, uniform approach to regulating users providing common services or producing similar products. The amendment will also modify the City's local limits.

It is our opinion that when the amendments become effective, the City will continue to have adequate legal authority to administer the program described in 40 CFR §403.8. Additionally, it is our opinion that the amendments to the pretreatment ordinance will not result in violations by the POTW of its discharge permit. It is furthermore our opinion that, in adopting the amendments, the City will follow all state and local laws and procedures regarding public notice and review.

Sincerely,

Jerrae C. Swanson
Environmental and Water Resources Attorney

Water and Sewer Department • 1100 10th Street, Suite 300, Greeley, CO 80631 • (970) 350-9811 Fax (970) 350-9805

We promise to preserve and improve the quality of life for Greeley through timely, courteous and cost-effective service.

Commented [JK1]: Add Update from Jerrae

Field Code Changed

City of Greeley, Colorado
Industrial Pretreatment Program
Substantial Modification Submittal

1.1.3. Draft Legal **CAPITALIZED AND BOLDED** and Deletions ~~striketrough and~~
bolded

DRAFT

Commented [JK2]: Add update from Jerrae

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Chapter 14.11

Industrial Pretreatment

14.11.010 — Short title.

This Chapter shall also be known as the Greeley Pretreatment Chapter. (Ord. 35, 2008 §1)

14.11.020 — Abbreviations.

The following abbreviations, when used in this Chapter, shall have the designated meanings:

BOD	-	Biochemical Oxygen Demand
BMP	-	Best Management Practices
F°	-	Fahrenheit
C°	-	Celsius
CDPS	-	Colorado Discharge Permit System
CIU	-	Categorical Industrial User
CFR	-	Code of Federal Regulations
EPA	-	United States Environmental Protection Agency
gpd	-	gallons per day
mg/L	-	milligrams per liter
O & M	-	Operation and Maintenance
POTW	-	Publicly Owned Treatment Works
RCRA	-	Resource Conservation and Recovery Act
SIU	-	Significant Industrial User
TSS	-	Total Suspended Solids
<u>FTO</u>	-	Total Toxic Organics
U.S.C	-	United States Code

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(Ord. 35, 2008 §1)

14.11.030 — Purpose and policy.

This Chapter establishes uniform requirements for Dischargers to the POTW, and enables the City to comply with relevant state and federal laws, including the Federal Water Pollution Control Act (33 U.S.C. §§ 1251–1387) and the General Pretreatment Regulations (40 C.F.R. Part 403). The objectives of this Chapter are:

- (1) — To prevent the introduction of Pollutants into the City's POTW that will interfere with the POTW's operation;
- (2) — To prevent the introduction of Pollutants into the City's POTW that will Pass Through the POTW, inadequately treated, into receiving waters, or that will otherwise be incompatible with the POTW;
- (3) — To protect both City personnel who may be affected by wastewater and biosolids in the course of their employment, and the general public;
- (4) — To promote reuse and recycling of wastewater and biosolids from the City's POTW;
- (5) — To establish and distribute equitably fees for the cost of operating, maintaining and improving the City's POTW; and
- (6) — To enable the City to comply with its CDPS permit conditions, biosolids use and disposal requirements, and other relevant federal and state laws. (Ord. 35, 2008 §1)

14.11.040 — Applicability.

This Chapter applies to all connections to the POTW, whether within or outside the City, and to all persons, whether within or outside the City, who are, by permit or otherwise, Users of the POTW. (Ord. 35, 2008 §1)

14.11.050 — Citation to federal regulations.

All citations in this Chapter to the Code of Federal Regulations are to those federal regulations in effect on the date this Chapter becomes law. This Chapter does not incorporate later amendments or editions of the cited material. (Ord. 35, 2008 §1)

14.11.060 — Definitions.

Unless a provision in this Chapter explicitly states otherwise, the following definitions shall apply:

~~Act.~~ The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251-1387.

~~Approval Authority.~~ The EPA Regional Administrator for Region VIII; or the State of Colorado if and when the State obtains primacy to administer its own pretreatment program under the Act.

~~Authorized Representative of the User.~~

- a. — If the User is a corporation: the president, secretary, treasurer or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- b. — If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively; or
- c. — If the User is a federal, state or local governmental entity: a director or highest level official appointed or designated to oversee the operation and performance of the activities of the government entity.

The individuals described in Paragraphs a. through c. above may designate another Authorized Representative if the authorization is in writing and is submitted to the City. The authorization shall specify either an individual or a position having responsibility for the overall operation of the facility from which the Discharge originates, such as the position of plant manager or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company.

~~Best Management Practices or BMPs.~~ Schedules of activities, maintenance policies and other management procedures that prevent or reduce the discharge of pollutants into the POTW, and that implement the prohibitions listed in Section 14.11.070.

~~Best Management Practices include Pretreatment Requirements, operating procedures and practices to control plant site runoff, spills, leaks, waste disposal and drainage from raw material storage.~~

~~Biochemical Oxygen Demand or BOD.~~ The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at twenty (20) degrees C, usually expressed as a concentration (e.g., mg/L).

~~Categorical Pretreatment Standard or Categorical Standard.~~ Any regulation containing Discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317(b) and (c)), which applies to a specific category of Users, and which appears in 40 C.F.R. Parts 405—471. This term includes Prohibited Discharge Standards.

~~City.~~ The City of Greeley.

~~Composite Sample.~~ A sampling procedure defined in 40 C.F.R. Part 403, Appendix E—Sampling Procedures, I—Composite Method.

~~Control Authority.~~ The POTW.

~~Department.~~ The City Water and Sewer Department.

~~Director.~~ The Director of the City Water and Sewer Department or his or her authorized designee.

~~Domestic Wastewater.~~ A combination of liquid wastes (sewage) which may include household chemicals, household wastes, human excreta, animal or vegetable matter in suspension or solution or other solids in suspension or solution which are discharged from a dwelling, building or other structure. ~~Domestic Wastewater~~ does not include commercial or Industrial Wastewater, or grease removed from a restaurant grease trap.

~~Environmental Protection Agency or EPA.~~ The United States Environmental Protection Agency.

~~Existing Source.~~ Any source of Discharge that is not a New Source.

~~Grab Sample.~~ A sampling procedure defined in 40 C.F.R. Part 403, Appendix E—Sampling Procedures, II—Grab Method.

~~GENERAL PERMIT—AN AUTHORIZATION TO DISCHARGE POLLUTANTS TO THE POTW WHICH COVERS MULTIPLE USERS WITHIN A SPECIFIC SECTOR IN ACCORDANCE WITH THE REQUIREMENTS OF THE ACT AND THIS CHAPTER.~~

~~Hauled Industrial Wastewater.~~ Liquid and water-carried industrial wastewaters that may include sanitary sewage from commercial buildings and industrial and manufacturing facilities, whether treated or untreated, that are hauled to the POTW by truck and discharged at the designated location.

~~Hauled Portable Toilet Wastewater.~~ The liquid or solid material removed from a portable toilet that holds only Domestic Wastewater (not the portable toilet chemicals or matrix itself).

~~Indirect Discharge or Discharge.~~ The introduction of Pollutants into the POTW from any nondomestic source.

~~Industrial Wastewater or Nondomestic Wastewater.~~ Water carrying wastes from any process or activity of industry, manufacturing, trade or business, from development of any natural resource, or from animal operations, or contaminated stormwater or leachate from solid waste facilities.

~~Instantaneous Maximum Allowable Discharge Limit.~~ The maximum concentration of a Pollutant allowed to be discharged at any time, determined from the analysis of any Grab or Composite Sample, independent of the industrial flow rate and the duration of the sampling event.

~~Interference.~~ A Discharge that, alone or in conjunction with a Discharge or Discharges from other sources, both:

- a. — Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- b. — Contributes to a violation of any requirement of the City's CDPS permit (including an increase in the magnitude or duration of a violation), or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/ regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II, commonly referred to as RCRA; any state regulations contained in

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any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; and the Toxic Substances Control Act.

~~*Medical Waste.* Isolation wastes, infectious agents, pathological wastes, sharps, body parts, human blood and blood products, contaminated body wipes, contaminated bedding, surgical wastes, dialysis wastes and potentially contaminated laboratory wastes.~~

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~~*New Source.*~~

~~a. Any building, structure, facility or installation from which there is (or may be) a Discharge, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(e) of the Act that will apply to such source if such standards are thereafter promulgated in accordance with that section, provided that:~~

~~1. The building, structure, facility or installation is constructed at a site at which no other source is located; or~~

~~2. The building, structure, facility or installation totally replaces the process or production equipment that causes the Discharge at an Existing Source; or~~

~~3. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, the City will consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source.~~

~~b. Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of Subparagraph a.2 or a.3 above, but otherwise alters, replaces, or adds to existing process or production equipment.~~

~~c. Construction of a New Source as defined under this Subsection has commenced if the owner or operator has:~~

~~1. Begun, or caused to begin, as part of a continuous onsite construction program:~~

~~a) Any placement, assembly or installation of facilities or equipment; or~~

~~b) Significant site preparation work including clearing, excavating or removing existing buildings, structures or facilities that is necessary to place, assemble or install New Source facilities or equipment; or~~

~~2. Entered into a binding contract for the purchase of facilities or equipment intended for use in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a binding contract for the purpose of this Subsection.~~

~~*Noncontact Cooling Water.* Water used for cooling that does not directly contact any raw material, intermediate product, waste product or finished product.~~

~~*Pass Through.* A Discharge from the POTW into state waters in quantities or concentrations that, alone or in conjunction with a Discharge or Discharges from other sources, causes or contributes to a violation of any requirement of the City's CDPs permit, including an increase in the magnitude or duration of a violation.~~

~~*Person.* An individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity; or their legal representatives, agents or assigns. This definition includes all federal, state and local government entities.~~

~~*pH.* A measure of the acidity or alkalinity of a solution, expressed in standard units.~~

~~*Pollutant.* Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, Medical Waste, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial waste and certain characteristics of wastewater (such as pH, temperature, TSS, turbidity, color, BOD, toxicity or odor).~~

~~*Pretreatment.* The reduction in the amount of Pollutants, the elimination of Pollutants or the alteration of the nature of Pollutant properties in wastewater prior to introducing such Pollutants into the POTW. The User may obtain this reduction or alteration by physical, chemical or biological processes; by process changes; or by other means, except by diluting the concentration of the Pollutants allowed by an applicable Pretreatment Standard. Appropriate pretreatment technology~~

includes control equipment such as equalization tanks or facilities for protection against surges or Slug loads that might interfere with or otherwise be incompatible with the POTW. Where wastewater from a regulated process is mixed with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated limit using the combined wastestream formula in 40 C.F.R. § 403.6(e).

Pretreatment Requirement. Any substantive or procedural requirement related to Pretreatment imposed on a User, other than a Pretreatment Standard.

Pretreatment Standard or Standard. Any Prohibited Discharge Standard, Categorical Pretreatment Standard or local limit.

Pretreatment Supervisor. The individual who oversees and administers the Pretreatment program for the POTW.

Prohibited Discharge Standard or Prohibited Discharge. An absolute prohibition against the Discharge of certain substances; these prohibitions appear in Section 14.11.070 below.

Publicly Owned Treatment Works or POTW. The "treatment works," as defined by Section 212 of the Act (33 U.S.C. § 1292), that is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling or reclamation of Domestic or Nondomestic Wastewater and any conveyances that carry such wastewater. POTW also means the City.

Satellite Waste Dump Site. A designated location directly connected to the POTW that is permitted to accept Hauled Portable Toilet Wastewater or Hauled Industrial Wastewater, ~~NONHAZARDOUS WASTEWATER AND NONDOMESTIC WASTEWATER.~~

~~SECTOR, USERS THAT ENGAGE IN SIMILAR ACTIVITIES AND DISCHARGE SIMILAR POLLUTANTS,~~

~~EXAMPLES OF SIMILAR ACTIVES THAT PRODUCE SIMILAR POLLUTANTS MAY INCLUDE, BUT ARE NOT LIMITED TO: FOOD SERVICE ESTABLISHMENTS OR PROCESSORS THAT COMMONLY DISCHARGE FATS OILS, AND GREASE; TRANSPORTATION VEHICLE REPAIR, MAINTENANCE AND WASHING FACILITIES THAT COMMONLY DISCHARGE PETROLEUM OIL, GREASE AND SAND; PHOTOGRAPHIC OR X-RAY PROCESSING FACILITIES, OR OPERATIONS THAT COMMONLY DISCHARGE SILVER; DENTAL OFFICES THAT COMMONLY DISCHARGE MERCURY; AND HEALTHCARE FACILITIES THAT OFTEN HAVE NEW OR EMERGING CONTAMINANTS.~~

~~Significant Industrial User, or SIU,~~

a. A User subject to a Categorical Pretreatment Standard under 40 C.F.R. § 403.6 and 40 C.F.R. Chapter I, subchapter N; or

b. A User that:

1. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

2. Contributes a process wastestream that makes up five percent (5%) or more of the average dry-weather hydraulic or organic capacity of the POTW Treatment Plant; or

3. Is designated as such by the City on the basis that the User has a reasonable potential to adversely affect the POTW's operation or to violate any Pretreatment Standard or Requirement.

e. The City may determine that an Industrial User subject to a Categorical Pretreatment Standard under 40 C.F.R. § 403.6 and 40 C.F.R. Chapter I, Subchapter N, is a Nonsignificant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than one hundred (100) gpd of total categorical

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wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

1. ~~_____ The Industrial User, prior to the City's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;~~
2. ~~_____ The Industrial User annually submits the certification statement required in Subsection 14.11.770(b), together with additional information necessary to support the certification statement; and~~
3. ~~_____ The Industrial User never discharges any untreated concentrated wastewater.~~
- d. ~~_____ Upon a finding that a User meeting the criteria in Subparagraph c, above has no reasonable potential to adversely affect the POTW's operation or to violate any Pretreatment Standard or Requirement, the City may at any time, on its own~~

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initiative or in response to a petition received from a User, and in accordance with procedures in 40 C.F.R. § 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

Slug Load or Slug.—Any Discharge at a flow rate or concentration that could violate the Prohibited Discharge Standards of Section 14.11.070 below or the local limits of Section 14.11.100 of this Chapter, or which has the reasonable potential to cause Interference or Pass Through.

Stormwater.—Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Total Suspended Solids (TSS).—The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquid and which is removable by laboratory filtering.

User or Industrial User.—A source of Indirect Discharge.

Wastewater.—Liquid and water-carried industrial and domestic waste from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, that is contributed to the POTW.

Wastewater Discharge Permit. ~~AN INDIVIDUAL WASTEWATER DISCHARGE PERMIT OR A GENERAL PERMIT GIVING An authorization to Discharge Pollutants to the POTW in accordance with the requirements of the Act and this Chapter.~~

Wastewater Treatment Plant or Treatment Plant.—That portion of the POTW designed to treat Wastewater. (Ord. 35, 2008 §1)

14.11.070 — Prohibited discharge standards.

- (a) — The following general and specific prohibitions apply to all Users of the POTW, whether or not they are subject to Categorical Pretreatment Standards, or any other national, state or local Pretreatment Standard or Requirement.
- (b) — ~~General Prohibition.~~ No User shall introduce or cause to be introduced into the POTW any Pollutant or Wastewater that causes Pass Through or Interference.
- (c) — ~~Specific Prohibitions.~~ No User shall introduce or cause to be introduced into the POTW the following Pollutants, substances or Wastewater:
- (1) — Any liquid, solid or gas that creates, singly or by interaction with other substances, a fire or explosion hazard in the POTW, including but not limited to wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees F (60 degrees C) using the test methods specified in 40 C.F.R. § 261.21.
- (2) — Wastewater having a pH less than 5.5 or greater than 11.5, or that may otherwise corrode POTW structures or equipment;
- (3) — Solid or viscous substances in amounts that will obstruct the flow in the POTW, hinder POTW operations or cause POTW Interference;
- (4) — Wastewaters containing sand or other inorganic particulate matter that will result in a settleable solids concentration greater than twenty-five (25) milliliters per liter in the User's Discharge;
- (5) — Pollutants, including oxygen-demanding Pollutants (BOD, etc.), discharged at a flow rate and/or Pollutant concentration that, either singly or by interaction with other Pollutants, will cause Interference;
- (6) — Wastewater of a temperature sufficient to damage the POTW collection system, or inhibit biological activity in the POTW Treatment Plant (resulting in Interference) or that causes the temperature of the entire wastewater stream to exceed one hundred four (104) degrees F (40 degrees C) at the entry point to the Treatment Plant;
- (7) — Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin, in amounts that will cause Interference or Pass Through;
- (8) — Pollutants that cause toxic gases, vapors or fumes within the POTW in a quantity that may cause worker health or safety problems;
- (9) — Trucked or hauled Pollutants, except at a Discharge point designated by the Director in accordance with Sections 14.11.190 and 14.11.200 herein;

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(10) — Noxious or malodorous liquids, gases, solids or other Wastewaters that, either singly or by interaction with other wastes, create a public nuisance or a human health hazard, or prevent entry into the sewers for maintenance or repair;

(11) — Wastewater that imparts color that cannot be removed by the treatment process (such as, but not limited to, dye wastes and vegetable tanning solutions), which consequently imparts color to the POTW's effluent, thereby violating the City's CDPS permit;

(12) — Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;

(13) — Stormwater, surface water, ground water, artesian well water, roof runoff and subsurface drainage, unless specifically authorized in writing by the Director;

(14) — Sludges, screenings or other residues from the Pretreatment of industrial wastes;

~~(15) — Medical Wastes, except as specifically authorized by the Director that causes or contributes to pass through or interference;~~

~~(16) — (15) Wastewater causing, alone or in conjunction with other sources, the POTW's effluent to fail a toxicity test;~~

~~(17) (16) Detergents, surface-active agents or other substances that may cause excessive foaming in the POTW;~~

~~(18) (17) Fats, oils or greases of animal or vegetable origin in concentrations that cause blockages, flow obstructions or Interference;~~

~~(19) (18) Wastewater causing two (2) readings on a combustible gas detection meter at any point in the POTW, of more than five percent (5%), or any single meter reading over ten percent (10%) of the Lower Explosive Limit;~~

~~(20) (19) Chemical treatments used for controlling solidified grease in sewer lines or grease interceptors that cause Pass Through of grease or obstruction of flow in the POTW, except in accordance with written authorization from the Director.~~

No person shall process or store any Pollutant, substance or Wastewater prohibited by this Chapter in such a manner that it could be discharged to the POTW. (Ord. 31, 2011 §1; Ord. 35, 2008 §1)

14.11.080 — National Categorical Pretreatment Standards.

(a) — The Categorical Pretreatment Standards found at 40 C.F.R., Parts 405—471 are hereby incorporated in this Chapter. Users must comply with applicable Categorical Pretreatment Standards and requirements.

(b) — Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a Pollutant in Wastewater, the Director may impose equivalent concentration or mass limits in accordance with 40 C.F.R. § 403.6(c).

(c) — When Wastewater subject to a Categorical Pretreatment Standard is mixed with Wastewater not regulated by the same Standard, the Director shall impose an alternate limit using the combined wastestream formula in 40 C.F.R. § 403.6(e).

(d) — A User may obtain a variance from a Categorical Pretreatment Standard if the User can prove, pursuant to the procedural and substantive provisions in 40 C.F.R. § 403.13, that factors relating to its Discharge differ fundamentally from the factors that EPA considered in developing the Categorical Pretreatment Standard.

(e) — A User may obtain a net/gross adjustment to a Categorical Pretreatment Standard in accordance with 40 C.F.R. § 403.15.

(f) — Each User shall be knowledgeable of all regulations applicable to the User. The Director shall make reasonable efforts to notify all affected Users of applicable standards and reporting requirements under 40 C.F.R. § 403.12. Failure of the Director to notify an affected User, however, does not relieve the User of complying with appropriate Categorical Pretreatment Standards or applicable reporting requirements. (Ord. 35, 2008 §1)

14.11.090 — Deadline for compliance with applicable pretreatment requirements and standards.

Existing Sources shall comply with applicable Categorical Pretreatment Standards within three (3) years of the effective date for the standard unless the standard specifies a shorter compliance period. The City shall establish a final compliance deadline for any existing User not covered by Categorical Pretreatment Standards, or for any categorical User whose local limits are more restrictive than the Categorical Pretreatment Standards. New Sources and new Users must comply with applicable Pretreatment Standards and Requirements upon initial Discharge. New Sources and new Users shall install, have

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~~operable and start-up all pollution control equipment required to meet applicable Pretreatment Standards and Requirements before beginning to Discharge. (Ord. 35, 2008 §1)~~

14.11.100 — **Local limits.**

(a) — Greeley has established the following local limits to prevent Pass Through and Interference and to protect beneficial use of Biosolids:

Table 14.11-A
Total Metals and Conventional Pollutants

<i>Pollutant/Pollutant Property</i>	<i>Daily Maximum Allowable Industrial Loading, lbs/day</i>
Arsenic, Total	0.146 0.527
Cadmium, Total	0.374 0.316
Chloride	17,082.000
Chromium, Total	3.870
Chromium, Hexavalent	3.260 7.978
Copper, Total	3.877 6.921
Cyanide, Total	0.119 1.170
Lead, Total	2.228 1.528
Mercury, Total	0.113 0.009
Molybdenum, Total	1.413 1.354
Nickel, Total	5.000 4.728
Selenium, Total	0.493 1.114
Silver, Total	0.748 4.463
Zinc, Total	19.170 11.711
BOD	14,173.000
TSS	13,176.000

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Table 14.11-B
Total BTEX (Benzene, Toluene, Ethylbenzene and Xylenes) and Benzene

<i>Pollutant/Pollutant Property</i>	<i>Instantaneous Grab, ug/L</i>
BTEX	750
Benzene	50

(b) — The City will allocate the daily Maximum Allowable Industrial Loading among Significant Industrial Users through Wastewater Discharge Permits. The total mass of pollutants allocated to Significant Industrial Users shall not exceed the Maximum Allowable Industrial Loading. Allocation of the POTW's Maximum Allowable Industrial Loading among all Significant Industrial Users shall be based upon consideration of discharge volume, flow rate or equitable but feasible distribution.

(c) — In addition, the Director may develop specific Discharge limitations for any other toxic or inhibiting Pollutant as necessary to prevent Interference, Pass Through, danger to the health and safety of POTW personnel or the general public, environmental harm, a POTW permit violation, or to avoid rendering the POTW's biosolids unacceptable for economical reclamation, disposal or use. (Ord. 31, 2011 §1; Ord. 35, 2008 §1)

14.11.110 — City's right of revision.

The limitations in Section 14.11.100 above are intended to prevent Pass Through and Interference and to ensure receiving water and biosolids quality. The City reserves the right to establish, by ordinance or in Wastewater Discharge Permits, more stringent limitations if necessary to achieve such protections. (Ord. 35, 2008 §1)

14.11.120 — Dilution prohibition.

No User shall ever increase the use of process water, or otherwise attempt to dilute a Discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a Discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The Director may impose mass limitations on Users who use dilution, pursuant to an applicable Pretreatment Standard or Requirement or in other cases when the imposition of mass limitations is appropriate. (Ord. 35, 2008 §1)

14.11.130 — Best Management Practices.

The Director may require any User to implement BMPs as necessary to ensure compliance with this Chapter. (Ord. 35, 2008 §1)

14.11.1305 — SECTOR CONTROL PROGRAMS

~~THE DIRECTOR MAY ESTABLISH SECTOR CONTROL PROGRAMS TO CONTROL SPECIFIC POLLUTANTS AS NECESSARY TO MEET THE OBJECTIVES OF THIS CHAPTER FOR USERS THAT ENGAGE IN SIMILAR ACTIVITIES AND DISCHARGE SIMILAR POLLUTANTS. THE DIRECTOR SHALL ESTABLISH POLICIES FOR EACH SECTOR CONTROL PROGRAM. USERS SUBJECT TO THESE SECTOR CONTROL PROGRAMS MAY BE REQUIRED TO INSTALL~~

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~~AND OPERATE WASTEWATER PRETREATMENT SYSTEMS AND, OR IMPLEMENT BEST MANAGEMENT PRACTICES AND MAY BE REQUIRED TO APPLY FOR A WASTEWATER DISCHARGE PERMIT.~~

14.11.140 — False or misleading information.

~~A User shall not knowingly make a false statement, representation or certification in any record, report, plan or other documentation filed, or required to be maintained, pursuant to this Chapter, the User's Wastewater Discharge Permit or order issued hereunder. (Ord. 35, 2008 §1)~~

14.11.150 — Tampering with monitoring devices or methods.

~~No person shall tamper, falsify or knowingly render inaccurate any monitoring device or method required under this Chapter, a Wastewater Discharge Permit or an order issued hereunder. (Ord. 35, 2008 §1)~~

14.11.160 — Pretreatment facilities.

~~Users shall construct, operate and maintain all facilities necessary to comply with this Chapter and applicable Categorical Pretreatment Standards and Requirements, within the applicable time limitations specified by EPA, the State or the Director. The User shall submit detailed plans describing such facilities and operating procedures to the Director for review and acceptance, prior to commencing construction. **THE REVIEW OF SUCH PLANS AND OPERATING PROCEDURES SHALL IN NO WAY RELIEVE THE USER FROM THE RESPONSIBILITY OF MODIFYING SUCH FACILITIES AS NECESSARY TO PRODUCE A DISCHARGE ACCEPTABLE TO THE CITY UNDER THE PROVISIONS OF THIS CHAPTER.** Notwithstanding the City's review and acceptance of a User's facilities and operating procedures under this Chapter, it shall be the User's sole responsibility to construct its facilities and implement operating procedures necessary to comply with applicable requirements. (Ord. 35, 2008 §1)~~

14.11.170 — Additional pretreatment measures.

~~(a) — Whenever the Director finds it necessary to protect the POTW or to accurately assess a User's compliance with this Chapter, he or she may require a User to restrict its Discharge during peak flow periods, Discharge only into specific sewers, relocate and/or consolidate points of Discharge, separate sewage wastestreams from industrial wastestreams or take other relevant measures.~~

~~(b) — The Director may require Users to install and maintain on their property a suitable storage and flow control facility to ensure equalization of flow. The City may issue a Wastewater Discharge Permit solely for flow equalization.~~

~~(c) — The User shall install grease, oil and sand interceptors when, in the opinion of the Director, they are necessary to properly handle Wastewater containing excessive amounts of grease, oil or sand. All interceptors shall be of the type and capacity specified in the City's BUILDING CODE Grease, Oil and Sand Interceptors Policy and Procedures document and as approved by the Director. Current copies of such document may be obtained from the Director. Users shall locate all interceptors so they are easily accessible for cleaning and inspection. The User shall inspect, clean, maintain and repair as needed all interceptors at its expense. The User shall make available for inspection by the Director all cleaning and maintenance records for a minimum of three (3) years.~~

~~(d) — The Director may require Users with the potential to Discharge flammable substances to install and maintain an approved combustible gas detection meter at a point prior to Discharge to the POTW.~~

~~(e) — The User shall calibrate all devices used to measure wastewater flow **FOR BILLING PURPOSES** and quality to ensure their accuracy as outlined in the City's Wastewater Flow Meter Accuracy Verification Guidelines. A copy of such Guidelines is available from the Director. (Ord. 35, 2008 §1)~~

14.11.180 — Accidental discharge/slug control plans.

~~(a) — The Director shall evaluate whether an Industrial User needs an accidental Discharge/Slug control plan. Such evaluations must be documented in the administrative file. The Director may require any User to develop, submit for~~

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approval and implement such a plan. Any requirement to develop and implement a Slug control plan shall be included in the User's Wastewater Discharge Permit. An accidental Discharge/Slug control plan shall contain, at a minimum, the following:

- (1) ~~A description of Discharge practices including non-routine batch Discharges;~~
 - (2) ~~A description of stored chemicals;~~
 - (3) ~~Procedures for immediately notifying the Director of any accidental or Slug Discharge, as required by Subsection 14.11.440(a) below; and~~
 - (4) ~~Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures must address inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, containment structures or equipment, measures for containing toxic organic Pollutants (including solvents) and measures and equipment for emergency response.~~
- (b) ~~An SIU shall notify the Director immediately of any changes at its facility affecting the potential for a Slug Discharge. (Ord. 35, 2008 §1)~~

~~14.11.190 Hauled portable toilet wastewater.~~

- (a) ~~A User may introduce Hauled Portable Toilet Wastewater into the POTW only in accordance with its permit.~~
- (b) ~~Hauled Portable Toilet Wastewater shall comply with all relevant provisions of this Chapter, including but not limited to Section 14.11.070.~~
- (c) ~~All portable toilet wastewater haulers shall obtain Wastewater Discharge Permits. Portable toilet wastewater haulers must submit a waste manifest form for every load. This form shall include, at a minimum, the name and address of the portable toilet waste hauler, permit number, truck identification and volume of waste. (Ord. 31, 2011 §1; Ord. 35, 2008 §1)~~

~~14.11.200 Hauled Industrial Wastewater.~~

- (a) ~~Generators of Hauled Industrial Wastewater must obtain Wastewater Discharge Permits prior to introducing Wastewater to the POTW.~~
- (b) ~~Hauled Industrial Wastewater shall comply with all relevant provisions of this Chapter, including but not limited to Sections 14.11.070 and 14.11.100.~~
- (c) ~~Industrial Wastewater haulers may Discharge loads only in accordance with their permit. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the Industrial Wastewater hauler to provide an analysis of any load prior to Discharge.~~
- (d) ~~Industrial Wastewater haulers must submit a waste manifest form for every load. This form shall include, at a minimum, the name and address of the Industrial Wastewater hauler, permit number, truck identification, names and addresses of the generator(s) of the waste, type and volume of the waste. The generator shall also certify that the Industrial Wastewaters are not RCRA hazardous wastes. (Ord. 35, 2008 §1)~~

~~14.11.210 Satellite Waste Dump Sites.~~

- (a) ~~Satellite Waste Dump Site operators must obtain A Wastewater Discharge Permits prior to introducing Wastewater to the POTW.~~
- (b) ~~Satellite Waste Dump Site operators shall comply with all relevant provisions of this Chapter, including but not limited to Section 14.11.070.~~
- (c) ~~Satellite Waste Dump Site operators must maintain records for all loads disposed of at their site. Such records shall include, at a minimum, the name of the hauler, the hauler's vehicle, the license number, the volume of waste and the hauler's~~

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certification that the waste is not RCRA hazardous. Satellite Waste Dump Site operators shall submit such records to the Director as required by their permit. (Ord. 35, 2008 §1)

~~14.11.220 — Wastewater analysis.~~

~~When requested by the Director, a User must submit information on the nature and characteristics of its Wastewater within forty-five (45) days of the request. (Ord. 35, 2008 §1)~~

~~14.11.230 — Requirement to obtain wastewater discharge permit.~~

~~(a) — All SIUs shall obtain a Wastewater Discharge Permit from the Director prior to any Discharge to the POTW.~~

~~(b) — The Director may require other Users to obtain a Wastewater Discharge Permit as necessary to accomplish the purposes of this Chapter.~~

~~(c) — Any violation of the terms and conditions of a Wastewater Discharge Permit shall constitute a violation of this Chapter. Obtaining a Wastewater Discharge Permit does not relieve a permittee of its obligation to comply with all applicable federal and state Pretreatment Standards or Requirements, or with any other applicable requirements of federal, state and local law. (Ord. 35, 2008 §1)~~

~~14.11.240 — Wastewater discharge permitting; existing connections.~~

~~An existing Discharger that becomes newly subject to permitting requirements under this Chapter, and that does not currently have a Wastewater Discharge Permit, may continue to Discharge to the POTW until its timely permit application is processed, provided that its Discharge does not cause Interference or Pass Through. In order to qualify under this provision, the Discharger must submit its application within ten (10) business days of notification by the Director of the permitting requirement. (Ord. 35, 2008 §1)~~

~~14.11.250 — Wastewater discharge permitting; new connections.~~

~~Any User required to obtain a Wastewater Discharge Permit that proposes to begin or recommence discharging into the POTW shall obtain such permit prior to beginning or recommencing its Discharge. The User shall file an application for a Wastewater Discharge Permit in accordance with Section 14.11.260 at least ninety (90) days prior to the date upon which such Discharge will begin or recommence. (Ord. 35, 2008 §1)~~

~~14.11.260 — Wastewater discharge permit application.~~

~~ALL USERS REQUIRED TO OBTAIN A WASTEWATER DISCHARGE PERMIT MUST SUBMIT A PERMIT APPLICATION. To obtain a Wastewater Discharge Permit, a User must submit a permit application to the Director. USERS~~

THAT ARE ELIGIBLE MAY REQUEST A GENERAL PERMIT UNDER SECTION 14.11.265. Such application shall include the following information for the premises from which the Discharge will occur:

- (1) All information required by Subsection 14.11.390(b);
- (2) A description of activities, facilities and plant processes, including a list of all raw materials and chemicals used or stored on the premises that will, or could accidentally or intentionally, be discharged to the POTW;
- (3) The number and type of employees and proposed or actual hours of operation;
- (4) Each product to be produced by type, amount, process or processes and rate of production;
- (5) The type and amount of raw materials to be processed (average and maximum per day);
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains and appurtenances by size, location and elevation, and all points of Discharge;
- (7) Facility contact information;
- (8) Time and duration of the Discharge; and
- (9) Any other information that the Director deems necessary to evaluate the Wastewater Discharge Permit application. The Director will return unprocessed to the User all incomplete or inaccurate applications. (Ord. 35, 2008 §1)

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14.11.265 WASTEWATER DISCHARGE PERMITTING: GENERAL PERMITS.

(A) AT THE DISCRETION OF THE DIRECTOR, THE DIRECTOR MAY USE GENERAL PERMITS TO CONTROL SIU INDUSTRIAL USER DISCHARGES TO THE POTW IF THE FOLLOWING CONDITIONS ARE MET. ALL FACILITIES TO BE COVERED BY A GENERAL PERMIT MUST:

- (1) INVOLVE THE SAME OR SUBSTANTIALLY SIMILAR TYPES OF OPERATIONS;
- (2) DISCHARGE THE SAME TYPES OF WASTES;
- (3) REQUIRE THE SAME EFFLUENT LIMITATIONS;
- (4) REQUIRE THE SAME OR SIMILAR MONITORING; AND
- (5) IN THE OPINION OF THE DIRECTOR ARE MORE APPROPRIATELY CONTROLLED UNDER A GENERAL PERMIT THAN UNDER INDIVIDUAL WASTEWATER DISCHARGE PERMITS.

B. TO BE COVERED BY THE GENERAL PERMIT, THE SIUSER MUST FILE A WRITTEN REQUEST FOR COVERAGE THAT IDENTIFIES ITS CONTACT INFORMATION, PRODUCTION PROCESSES, THE TYPES OF WASTES GENERATED, THE LOCATION FOR MONITORING ALL WASTES COVERED BY THE GENERAL PERMIT, ANY REQUESTS IN ACCORDANCE WITH SECTION 14.11.390(B) FOR A MONITORING WAIVER FOR A POLLUTANT NEITHER PRESENT NOR EXPECTED TO BE PRESENT IN THE DISCHARGE, AND ANY OTHER INFORMATION THE POTW DEEMS APPROPRIATE. A MONITORING WAIVER FOR A POLLUTANT NEITHER PRESENT NOR EXPECTED TO BE PRESENT IN THE DISCHARGE IS NOT EFFECTIVE IN THE GENERAL PERMIT UNTIL AFTER THE DIRECTOR HAS PROVIDED WRITTEN NOTICE TO THE SIUSER THAT SUCH A WAIVER REQUEST HAS BEEN GRANTED IN ACCORDANCE WITH SECTION 14.11.390(B).

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C. THE DIRECTOR WILL RETAIN A COPY OF THE GENERAL PERMIT, DOCUMENTATION TO SUPPORT THE POTW'S DETERMINATION THAT A SPECIFIC SIUSER MEETS THE CRITERIA IN SUBSECTION (A) (1-5) ABOVE AND APPLICABLE STATE REGULATIONS, AND A COPY OF THE USER'S WRITTEN REQUEST FOR COVERAGE FOR THREE YEARS AFTER THE EXPIRATION OF THE GENERAL PERMIT.

D. THE DIRECTOR MAY NOT CONTROL AN SIU THROUGH A GENERAL PERMIT WHERE THE FACILITY IS SUBJECT TO PRODUCTION-BASED CATEGORICAL PRETREATMENT STANDARDS OR CATEGORICAL PRETREATMENT STANDARDS EXPRESSED AS MASS OF POLLUTANT DISCHARGED PER DAY OR FOR IUS

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WHOSE LIMITS ARE BASED ON THE COMBINED WASTESTREAM FORMULA IN SECTION 14.11.080 (C) OR NET/GROSS CALCULATIONS IN SECTION 14.11.080 (E);

14.11.270 — Wastewater discharge permit decisions.

The Director will evaluate the data furnished by the User in its application and may require additional information. Within thirty (30) days of receipt of a complete Wastewater Discharge Permit application, the Director will determine whether or not to issue a Wastewater Discharge Permit. (Ord. 35, 2008 §1)

14.11.280 — Issuance of draft wastewater discharge permits.

If the Director determines that a Wastewater Discharge Permit is appropriate, he or she will first issue a draft permit for review. Notice of the availability of the draft shall be posted in the same manner as other public notices. The User and the public shall have thirty (30) days to submit written comments on the draft permit. The Director shall issue a final permit within fifteen (15) days of the close of the thirty-day comment period. (Ord. 35, 2008 §1)

14.11.290 — Wastewater discharge permit decision appeals.

Any person, including the User, may petition the Director to reconsider the terms of a Wastewater Discharge Permit ("Administrative Appeal") within thirty (30) days of the effective date of the final permit or the decision not to issue a permit.

- (1) — Failure to submit a written petition for review within such thirty-day period shall constitute a waiver of the right to the Administrative Appeal.
- (2) — In its petition, the appealing party must indicate the Wastewater Discharge Permit provisions objected to, the reasons for this objection and the alternative condition, if any, it seeks to place in the permit. Except for provisions that change from the draft to the final permit, the petitioner may only appeal those issues it raised during the public comment period.
- (3) — Only the challenged portions of the final Wastewater Discharge Permit shall be stayed pending an appeal.
- (4) — Failure of the Director to act within twenty (20) days of receiving a written petition for review shall constitute denial of the petition.
- (5) — Aggrieved parties may seek review of the Director's Wastewater Discharge Permit decision by filing a request with the Director within thirty (30) days of the date of his or her final decision asking that the Director's written decision be sent to the Water and Sewer Board. The Director shall submit his or her written decision to the Water and Sewer Board within thirty (30) days of receiving the request. The Water and Sewer Board shall make its decision based on the administrative record.
- (6) — Aggrieved parties seeking review of the Water and Sewer Board's Wastewater Discharge Permit decision must do so by filing a request for hearing with the Administrative Hearing Officer, as authorized by Section 3-11 of the Greeley City Charter, within thirty (30) days after the decision of the Board. Such review shall be *de novo*, and the Administrative Hearing Officer's decision shall be final. Administrative Hearing Officer decisions not to reconsider a Wastewater Discharge Permit,

~~not to issue a Wastewater Discharge Permit or not to modify a Wastewater Discharge Permit shall be considered the final administrative action for purposes of judicial review.~~

~~(7) — Any appeal from the decision of the Administrative Hearing Officer shall be to the appropriate court pursuant to C.R.C.P. 106. (Ord. 35, 2008 §1)~~

~~14.11.300 — Wastewater discharge permit contents.~~

~~The Director shall include such conditions in the permit that he or she determines are reasonably necessary to prevent Pass Through or Interference, protect the quality of the water body receiving the Treatment Plant's effluent, protect POTW worker health and safety, facilitate biosolids management and disposal and protect against damage to the POTW.~~

~~(1) — Wastewater Discharge Permits shall:~~

- ~~a. — Identify the permit term, which in no event shall exceed five (5) years;~~
- ~~b. — Contain a statement that the permit is nontransferable without prior notification to the Director in accordance with Section 14.11.330, and provisions for furnishing the new owner or operator with a copy of the existing permit;~~
- ~~c. — Contain effluent limits, including BMPs, based on applicable Pretreatment Standards and Requirements;~~
- ~~d. — Contain self-monitoring, sampling, reporting, notification and record-keeping requirements, which shall include the Pollutants or BMP to be monitored, sampling location, sampling frequency, sample type and analysis method based on federal, state and local law;~~
- ~~e. — Contain requirements to control Slug discharges, if determined by the Director to be necessary;~~
- ~~f. — Contain a statement of applicable civil and criminal penalties for violating Pretreatment Standards and Requirements; and~~
- ~~g. — Contain any applicable compliance schedule, which shall not extend the time for compliance beyond that required by applicable federal, state or local law.~~

~~(2) — Wastewater Discharge Permits may contain the following:~~

- ~~a. — Limits on the average and/or maximum rate of discharge, time of discharge and/or requirements for flow regulation and equalization;~~
- ~~b. — Requirements to install, operate and maintain Pretreatment technology, pollution control or containment devices to reduce, eliminate or prevent the introduction of Pollutants into the POTW;~~
- ~~c. — Requirements to develop and implement spill control plans or other special conditions necessary to prevent accidental, unanticipated or no routine discharges;~~
- ~~d. — Requirements to develop and implement waste minimization plans to reduce the amount of Pollutants discharged to the POTW;~~
- ~~e. — The unit charge or schedule of User charges and fees for treating Wastewater discharged to the POTW;~~
- ~~f. — Requirements to install and maintain inspection and sampling facilities or other equipment, including flow measurement devices;~~
- ~~g. — A statement that compliance with the Wastewater Discharge Permit does not relieve the permittee of responsibility to comply with all applicable federal and state Pretreatment Standards, including those that become effective during the term of the Wastewater Discharge Permit; and~~
- ~~h. — Other conditions that the Director deems necessary to ensure compliance with this Chapter and state and federal requirements. (Ord. 35, 2008 §1)~~

~~14.11.310 — Wastewater discharge permit duration.~~

~~A Wastewater Discharge Permit shall be issued for a specified term, not exceeding five (5) years from the effective date of the permit. The Director may issue a Wastewater Discharge Permit for a term less than five (5) years. (Ord. 35, 2008 §1)~~

~~14.11.320 — Wastewater discharge permit modification.~~

(a) ~~— The Director may modify a Wastewater Discharge Permit for good cause, including but not limited to the following reasons:~~

- ~~(1) — To incorporate any new or revised federal, state or local Pretreatment Standards or Requirements;~~
- ~~(2) — To address significant alterations or additions to the User's operation, processes or Wastewater volume or character since the time of permit issuance;~~
- ~~(3) — A change in the POTW that requires either a temporary or permanent reduction or elimination of the permitted discharge;~~
- ~~(4) — Information indicating that the permitted discharge may threaten the POTW, human health or the environment;~~
- ~~(5) — Violation of any terms or conditions of the permit;~~
- ~~(6) — Misrepresentations or failure to fully disclose all relevant facts in the permit application or in any required reporting;~~
- ~~(7) — Revision of Categorical Pretreatment Standards, or a variance there from under 40 C.F.R. § 403.13;~~
- ~~(8) — To correct typographical or other errors in the permit; or~~
- ~~(9) — To reflect a transfer of facility ownership or operation to a new owner or operator.~~

~~(b) — A User may seek review of a Permit Modification and request an Administrative Appeal Hearing within ten (10) days following issuance of modifications. The Administrative Appeal Hearing shall be conducted according to procedures described in Section 14.11.290. (Ord. 35, 2008 §1)~~

~~14.11.330 — Wastewater discharge permit transfer.~~

~~A Wastewater Discharge Permit holder may transfer its permit to a new owner or operator only if the permittee gives at least sixty (60) days' advance notice to the Director, and the Director approves the permit transfer in writing. The notice to the Director must include a written certification by the new owner or operator that:~~

- ~~(1) — The new owner and/or operator has no immediate intent to change the facility's operations and processes;~~
- ~~(2) — The new owner and/or operator accepts full responsibility for complying with the existing permit; and~~
- ~~(3) — Identifies the specific date of transfer. (Ord. 31, 2011 §1; Ord. 35, 2008 §1)~~

~~14.11.340 — Wastewater discharge permit suspension or revocation.~~

~~The Director may suspend or revoke a Wastewater Discharge Permit for good cause, including but not limited to the following reasons:~~

- ~~(1) — Failure to provide prior notification to the Director of changed conditions pursuant to Section 14.11.430;~~
- ~~(2) — Misrepresentation or failure to fully disclose all relevant facts in the permit application;~~
- ~~(3) — Falsifying monitoring reports;~~
- ~~(4) — Tampering with monitoring equipment;~~
- ~~(5) — Refusing to allow the Director timely access to the facility premises and records;~~
- ~~(6) — Failure to pay fines;~~
- ~~(7) — Failure to pay sewer charges;~~
- ~~(8) — Failure to meet compliance schedules;~~
- ~~(9) — Failure to complete a Wastewater survey or timely permit renewal application;~~
- ~~(10) — Failure to provide advance notice of the transfer of business ownership of a permitted facility as required by Section 14.11.330; or~~
- ~~(11) — Violation of any Pretreatment Standard or Requirement, or any terms of the permit or this Chapter.~~

~~Wastewater Discharge Permits shall be voidable upon cessation of operations. All Wastewater Discharge Permits are void upon the issuance of a new replacement Wastewater Discharge Permit. The permittee may appeal the voiding of a permit within ten (10) days of notice that the permit is void. This appeal may be taken pursuant to Section 14.11.290. (Ord. 35, 2008 §1)~~

~~14.11.350 — Suspension or revocation of permit; duration.~~

~~If the Director finds cause for suspension or revocation of a Wastewater Discharge Permit, either under the terms of Section 14.11.340 or any other section of this Chapter, the Director shall determine whether to revoke the permit for the remainder of its term or to suspend it for any shorter period. Such determination shall be based on the severity of the violation, the effects on public health, safety and welfare and the time during which the violation can be remedied, if at all. (Ord. 35, 2008 §1)~~

~~14.11.360 — Suspension or revocation of permit; appeal; emergency suspension.~~

~~(a) — Upon determination by the Director of just cause under the terms of this Chapter to suspend or revoke a Wastewater Discharge Permit, the User shall be sent, by certified mail or personal delivery service, written notice of termination of POTW service.~~

~~(b) — The User may elect to appeal such determination, in which event such User shall, within ten (10) days of the date of mailing or service, notify in writing, the Director of intent to appeal, specifying the particular section of the determination contested and the basis thereof. The Appeal shall be conducted according to procedures described in Section 14.11.290.~~

~~(c) — The suspension or revocation of the permit shall be stayed pending the appeal hearing unless the Director determines that the suspension is necessary to prevent an imminent danger to the public health, safety or welfare, or interference with the operation or treatment abilities of the POTW. The Director may include in the temporary suspension reasonable orders or conditions with which the permittee shall comply to protect the public health and safety.~~

~~(1) — Any User notified to suspend its discharge shall immediately stop or eliminate its contribution. If a User fails to immediately comply voluntarily with the suspension order, the Director may take all necessary steps, including immediate severance of the water or sewer connection, to prevent or minimize damage to the POTW, its receiving stream or danger to any individuals. The Director may allow the User to recommence its discharge when the User demonstrates to the Director that the threat has been satisfactorily resolved, unless the Director initiates termination proceedings against the User under Section 14.11.610.~~

~~(2) — A User wholly or partly responsible for any discharge that is ordered suspended under this Section shall, within five (5) days of receiving such order, submit to the Director a detailed written report describing the causes of the harmful situation and the measures taken to prevent any future occurrence.~~

~~(d) — Any breach of the conditions or orders of an emergency suspension is an independent ground for revocation of the permit, assessment of a penalty or both. (Ord. 35, 2008 §1)~~

~~14.11.370 — Wastewater Discharge Permit reissuance.~~

~~A User with an expiring Wastewater Discharge Permit shall apply for permit reissuance by submitting a complete permit application a minimum of ninety (90) days prior to the expiration of the User's existing permit. (Ord. 35, 2008 §1)~~

~~14.11.380 — Regulation of waste received from other jurisdictions.~~

~~If another governmental entity or User outside of the City's jurisdictional boundary contributes Wastewater to the POTW, the Director shall rely on one (1) or more of the following to ensure compliance with the terms of this Chapter:~~

~~(1) — Extra-jurisdictional enforcement authority to the extent permitted by law.~~

~~(2) — Intergovernmental agreement with the other jurisdiction.~~

~~(3) — Wastewater Discharge Permit with the specific User. (Ord. 35, 2008 §1)~~

~~14.11.390 — Baseline monitoring reports.~~

~~(a) — Within either one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 C.F.R. § 403.6(a)(4), whichever is later, existing categorical Users currently discharging to or scheduled to discharge to the POTW shall submit to the Director a report containing the information listed in Subsection (b) below. At least ninety (90) days prior to commencing their discharge, New Sources, and sources that become categorical Users subsequent to the promulgation of an applicable Categorical Standard, shall submit to~~

the Director a report containing the information listed in Subsection (b) below. A New Source shall report the method of Pretreatment it intends to use to meet applicable Categorical Standards. A New Source also shall estimate the anticipated flow and quantity of Pollutants it will discharge.

(b) — Each User described in Subsection (a) above shall submit a report containing the following information:

(1) — *Identifying Information.* The name and address of the facility, including the name of the operator and owner.

(2) — *Contact information,* description of activities, facilities and plant production processes on the premises.

(3) — *Environmental Permits.* A list of all environmental control permits held by or for the facility.

(4) — *Description of Operations.* A brief description of the User's operations and average production rates, including identification of all applicable North American Industry Classification System Codes. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

(5) — *Flow Measurement.* The measured average daily and maximum daily flow, in gpd, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 C.F.R. § 403.6(e).

(6) — *Measurement of Pollutants.*

a. — The Categorical Pretreatment Standards applicable to each regulated process.

b. — The results of sampling and analysis identifying the nature and concentration, and/or mass where required by the Categorical Standard or by the Director, of regulated Pollutants in the discharge from each regulated process. The information shall include a Chain of Custody record that lists the outfall location, sample date, sample time, sample type and name of sample collector.

c. — Instantaneous, daily maximum and long-term average concentrations, or mass where required.

d. — The sample shall be representative of daily operations and shall be analyzed according to procedures set out in Section 14.11.490. Where the standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Director or the applicable Standards to determine compliance with the Standard.

e. — The User must sample according to the procedures set out in Section 14.11.500.

f. — The User shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this Subsection.

g. — The User should take samples immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment, the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 C.F.R. § 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternative concentration or mass limit has been calculated in accordance with 40 C.F.R. § 403.6(e), the User shall submit this adjusted limit along with supporting data to the POTW.

h. — The Director may allow the User to submit a baseline report that utilizes only historical data so long as the data provides information sufficient to determine the need for industrial Pretreatment measures.

i. — The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis accurately represent normal work cycles and expected Pollutant discharges to the POTW.

(7) — *Certification.* A statement, reviewed by the Authorized Representative of the User and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional O&M and/or additional Pretreatment is required to meet the Pretreatment Standards and Requirements.

(8) — *Compliance Schedule.* If additional Pretreatment and/or O&M is required to meet the Categorical Pretreatment Standards, the shortest schedule by which the User will provide such additional Pretreatment and/or O&M shall be submitted.

The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Chapter must meet the requirements set out in Section 14.11.400.

(9) — *Signature and Report Certification.* All baseline monitoring reports must be signed and certified in accordance with Subsection 14.11.770(a). (Ord. 35, 2008 §1)

14.11.400 — Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by Paragraph 14.11.390(b)(8):

(1) — The schedule shall contain progress increments in the form of dates by which to commence and complete major events leading to the construction and operation of additional Pretreatment, or implementation of additional O&M, required for the User to meet the applicable Pretreatment Standards. (Such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction and beginning and conducting routine operations.)

(2) — No increment referred to in the preceding Paragraph shall exceed nine (9) months.

(3) — The User shall submit a progress report to the Director no later than fourteen (14) days following each increment date in the schedule and the final date of compliance, including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps the User is taking to return to the established schedule.

(4) — In no event shall more than nine (9) months elapse between such progress reports to the Director. (Ord. 35, 2008 §1)

14.11.410 — Reports on compliance with Categorical Pretreatment Standard deadline.

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards or, in the case of a New Source, following commencement of the introduction of Wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to the Director a report containing the information described in Paragraphs 14.11.390(b)(4) through (6). For Users subject to equivalent mass or concentration limits established according to the procedures in 40 C.F.R. § 403.6(c), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to Categorical Pretreatment Standards expressed in terms of allowable Pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified according to Subsection 14.11.770(a). (Ord. 35, 2008 §1)

14.11.420 — Periodic self-monitoring compliance reports.

(a) — An SIU shall submit periodic reports that indicate the nature and concentration of Pollutants in its discharge that are limited by a Pretreatment Standard, along with the measured daily flows. The information shall include a Chain of Custody record that lists the outfall location, sample date, sample time, sample type and name of sample collector. The Director shall establish the schedule for such reporting in the SIU's Wastewater Discharge Permit. Such schedule shall require submittal of the reports at a frequency of no less than every six (6) months. In cases where the Pretreatment Standard requires compliance with a BMP or pollution prevention alternative, the User must submit documentation as required by the Director or the applicable Standard to determine the compliance status of the User. All periodic compliance reports must be signed and certified according to Subsection 14.11.770(a).

(b) — All reports under this Section are due thirty (30) days following the end of the reporting period stated in the SIU's permit.

(c) — All Wastewater samples required under this Section must be representative of the SIU's discharge. The SIU shall properly operate and maintain all Wastewater monitoring and flow measurement facilities. Failure of an SIU to keep its

monitoring facility in good working order shall not be grounds for the SIU to claim that sample results are unrepresentative of its discharge.

(d) — If an SIU subject to the reporting requirement in this Section monitors any Pollutant more frequently than required by the Director using the procedures prescribed in Section 14.11.500, the SIU shall include the results of this monitoring in the periodic compliance report. (Ord. 35, 2008 §1)

14.11.430 — Reports of changed conditions.

(a) — Each User must notify the Director at least thirty (30) days in advance of any planned significant changes to the User's operations or system that might alter the nature, quality or volume of its Wastewater.

(b) — The Director may require the User to submit any information necessary to evaluate the changed condition, including a Wastewater Discharge Permit application under Section 14.11.260.

(c) — The Director may issue a Wastewater Discharge Permit under Section 14.11.280 or modify an existing Wastewater Discharge Permit under Section 14.11.320 in response to changed conditions or anticipated changed conditions.

(d) — For purposes of this requirement significant changes include, but are not limited to, flow or Pollutant loading increases of twenty percent (20%) or greater, and the discharge of any previously unreported Pollutants. (Ord. 35, 2008 §1)

14.11.440 — Reports of potential problems.

(a) — In the case of any Discharge that may cause potential problems for the POTW, including but not limited to accidental Discharges, Discharges of a nonroutine episodic nature, a noncustomary batch Discharge or a Slug Load, the User shall immediately notify the POTW by telephone of the incident. This notification shall include the location of the Discharge, type of waste, duration, concentration and volume, if known, and corrective actions taken by the User.

(b) — Within five (5) days following such Discharge, the User shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the Discharge and the measures the User will take to prevent similar future occurrences. Such report shall not relieve the User of any expense, loss, damage or other liability that it may incur as a result of damage to the POTW, natural resources or other persons or property; nor shall such report relieve the User of any fines, penalties or other liability that may be imposed pursuant to this Chapter or other applicable law.

(c) — A User shall permanently post on its bulletin board or other prominent place information advising employees whom to call in the event of a Discharge described in Subsection (a) above. The SIU shall ensure that all employees who may cause such a Discharge to occur are advised of the emergency notification procedure. (Ord. 35, 2008 §1)

14.11.450 — Reports from un-permitted users.

Users not required to obtain a Wastewater Discharge Permit shall provide reports to the Director as the Director may require. (Ord. 35, 2008 §1)

14.11.460 — Reporting of violations and repeat sampling.

If sampling performed by a User indicates a violation, the User must notify the Director in writing or by telephone within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within thirty (30) days after becoming aware of the violation. Where the City has performed sampling and analysis in lieu of the User, the City must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Where the City finds a violation as a result of its compliance monitoring event, then the User shall perform repeat sampling and analysis within thirty (30) days after becoming notified of the violation. (Ord. 35, 2008 §1)

14.11.470 — Bypass reporting.

Users must report all Bypasses in accordance with Subsection 14.11.740(c). (Ord. 35, 2008 §1)

14.11.480 — Notification of the discharge of hazardous waste.

(a) — A User shall notify in writing the Director, the EPA Region VIII Waste Management Division and the Colorado Hazardous Materials and Waste Management Division of any Discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification must include the name of the hazardous

waste as set forth in 40 C.F.R. Part 261, the EPA hazardous waste number and the type of Discharge (continuous, batch or other);

(1) — If the User Discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, to the extent such information is known and readily available to the User, the notification shall also: identify the hazardous constituents contained in the wastestream; estimate the mass and concentration of such constituents in the wastestream Discharged during that calendar month; and estimate the mass and concentration of such constituents in the wastestream the User expects to Discharge during the following twelve (12) months.

(2) — The User shall provide such notification no later than one hundred eighty (180) days after the Discharge commences. Any notification under this Subsection need be submitted only once for each hazardous waste Discharged. (However, the User must notify the POTW of any changed conditions under Section 14.11.430). The notification requirement in this Subsection does not apply to Pollutants already reported by Users subject to Categorical Pretreatment Standards under the self-monitoring requirements of Sections 14.11.390, 14.11.410 and 14.11.420.

(b) — Users are exempt from the requirements of Subsection (a) above during a calendar month in which they Discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User Discharges more than such quantities of any hazardous waste do not require additional notification. (However, the User must notify the POTW of any changed conditions under Section 14.11.430.)

(c) — If EPA or the State issues any new regulations under Section 3001 of RCRA identifying any additional characteristic of a hazardous waste or listing any additional substance as a hazardous waste, the User must notify the Director, the EPA Region VIII Waste Management Division and the Colorado Hazardous Materials and Waste Management Division of the Discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) — In the case of any notification made under this Chapter, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practicable.

(e) — This provision does not create a right to Discharge any substance not otherwise permitted to be Discharged by this Chapter, a permit issued hereunder or any applicable federal or state law. (Ord. 35, 2008 §1)

14.11.490 — Analytical requirements.

All Pollutant analyses, including sampling techniques, to be submitted as part of a ~~Wastewater Discharge Permit~~ application or report shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the Pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the Pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Director or other parties, that are approved by the EPA. (Ord. 35, 2008 §1)

14.11.500 — Sample collection.

Reports required in Section 14.11.390, 14.11.410 and 14.11.420 must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(1) — Except as indicated in Paragraphs (2) and (3) below, the User must collect wastewater samples using twenty-four-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 C.F.R. Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four-hour period may be composited prior to the analysis as follows: for cyanide, total phenols and sulfides, the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA

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methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

(2) — Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides and volatile organic compounds must be obtained using grab collection techniques UNLESS SPECIFIED OTHERWISE IN A WASTEWATER DISCHARGE OR A GENERAL PERMIT DISCHARGE PERMIT OR OTHERWISE APPROVED BY THE CITY.

(3) — For sampling required in support of baseline monitoring and ninety-day compliance reports required in Sections 14.11.390 and 14.11.410, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by Section 14.11.420, the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements. (Ord. 35, 2008 §1)

14.11.510 — Timely submittal of reports.

For written reports required by this Chapter or a Wastewater Discharge Permit:

(1) — The date of the postmark shall constitute submittal for reports sent postage prepaid by U.S. Mail;

(2) — The date of receipt by the Director shall constitute submittal for reports sent by other means. (Ord. 35, 2008 §1)

14.11.520 — Record keeping.

Users subject to the reporting requirements of this Chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 14.11.130. Records shall include the date, exact place, method and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the

duration of any litigation concerning the User or the City, or where the User has been specifically notified of a longer retention period by the Director. (Ord. 35, 2008 §1)

14.11.530 — Right of entry; inspection and sampling.

Upon presentation of proper credentials, the Director may enter the premises of any User to determine the User's compliance with this Chapter and any permit or order issued hereunder. Users shall allow the Director ready access to all parts of the premises to inspect, sample, examine and copy records, and to perform any additional duties related to such compliance issues.

- (1) — Where a User has security measures in force that require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the Director will be permitted to enter without delay for the purpose of performing specific responsibilities.
- (2) — The Director shall have the right to set up on the User's property, or require installation of, any devices necessary to sample and/or measure the User's operations.
- (3) — The Director may require the User to install, in accordance with local construction standards and specifications, such sampling and monitoring equipment and facilities as necessary to ensure compliance with applicable requirements. The User shall maintain sampling and monitoring equipment at all times in a safe and proper operating condition at its own expense.
- (4) — The Director may require the User to install and maintain sampling and monitoring facilities independent of the User's sampling and monitoring facilities to enable the Director to independently monitor the User's Discharge activities.
- (5) — At the request of the Director, the User shall promptly remove any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled. The User shall bear any costs of clearing such access.
- (6) — In the event that the Director is refused admission to the Discharger's premises, the Director may discontinue water or wastewater service to the premises until the Director has been afforded reasonable access to the premises to accomplish inspection or sampling. (Ord. 35, 2008 §1)

14.11.540 — Search warrants.

The Director may request the Municipal Court or other appropriate court to issue a search warrant if:

- (1) — The User or someone the Director reasonably believes to be acting on the User's behalf denies the Director access to a building, structure or property, or portion thereof; and
- (2) — The Director can demonstrate probable cause to believe that access to such area may show a violation of this Chapter, that the Director requires access to the area to conduct routine compliance inspection or sampling or that the Director needs access to the area to otherwise protect the public health, safety or welfare. (Ord. 35, 2008 §1)

14.11.550 — Confidential information.

Information and data on a User obtained from reports, surveys, Wastewater Discharge Permit applications, Wastewater Discharge Permits and monitoring programs, and from the Director's inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the Director, that the release of such materials would divulge information, processes or methods of production entitled to protection as trade secrets under applicable law. The User must assert any such request at the time it submits the materials. When a User requests and demonstrates upon submitting materials that they should be held confidential, the Director shall withhold from public inspection those portions of materials such that might disclose trade secrets or secret processes. The Director shall, however, make such materials available immediately upon request to governmental agencies for uses related to the CDPS or Pretreatment programs, and in enforcement proceedings involving the person furnishing the report. Wastewater

constituents and characteristics and other "effluent data" as defined by 40 C.F.R. § 2.302 do not constitute confidential information and shall be available to the public without restriction. (Ord. 35, 2008 §1)

14.11.560 — Publication of Users in Significant Noncompliance.

The Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW, a list of the Users that, during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term *Significant Noncompliance* shall mean:

- (1) — Chronic violations of Wastewater Discharge limits, defined herein as those in which sixty-six percent (66%) or more of Wastewater measurements taken for the same pollutant during a six-month period exceed by any amount, a numeric Pretreatment Standard or Requirement, including Instantaneous Maximum Allowable Discharge Limits;
- (2) — Technical Review Criteria (TRC) violations, defined herein as those in which thirty-three percent (33%) or more of Wastewater measurements taken for each Pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including the Instantaneous Maximum Allowable Discharge Limit, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other Pollutants except pH);
- (3) — Any other violation of Pretreatment Standards or Requirements (daily maximum, long-term average, Instantaneous Maximum Allowable Discharge Limit or narrative standard) that the Director determines has caused, alone or in combination with other Discharges, Interference or Pass Through, or that has endangered the health of POTW personnel or the general public;
- (4) — Any Discharge of a Pollutant that caused imminent endangerment to human health or the environment, or resulted in the Director's exercise of his or her emergency authority to halt or prevent such a Discharge;
- (5) — Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a Wastewater Discharge Permit or enforcement order for starting construction, completing construction or attaining final compliance;
- (6) — Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, periodic self-monitoring reports and reports related to compliance schedules;
- (7) — Failure to accurately report noncompliance; or
- (8) — Any other violation(s), including a violation of a SECTOR CONTROL PROGRAM OR BMP, that the Director determines will adversely affect the operation or implementation of the local Pretreatment program. (Ord. 35, 2008 §1)

14.11.570 — Notice of violation.

When the Director finds that a User has violated or continues to violate any provision of this Chapter, a Wastewater Discharge Permit, an order issued hereunder or any other Pretreatment Standard or Requirement, the Director may serve that User a written Notice of Violation. Within thirty (30) days of the receipt of such notice, the User shall submit in writing to the Director an explanation of the violation and a plan with specific steps to correct the violation and prevent its recurrence. Submission of this plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Issuance of a Notice of Violation shall not be a bar against, or a prerequisite for, taking any other action against the User. A User may seek review of a Notice of Violation and request an Administrative Appeal Hearing within ten (10) days following issuance of the Notice of Violation. The Administrative Appeal Hearing shall be conducted according to procedures described in Section 14.11.710. (Ord. 35, 2008 §1)

14.11.580 — Compliance orders.

When the Director finds that a User has violated or continues to violate any provision of this Chapter, a Wastewater Discharge Permit, an order issued hereunder or any other Pretreatment Standard or Requirement, the Director may order the User responsible for the Discharge to attain compliance within a specified time. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of Pollutants discharged to the POTW. Compliance orders may also assess fines and administrative costs against the User. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User. A User may seek review of a compliance and request an Administrative Appeal Hearing within ten (10) days following

issuance of a compliance order. The Administrative Appeal Hearing shall be conducted according to the procedures described in Section 14.11.710. (Ord. 35, 2008 §1)

14.11.590 — Show cause hearing.

The Director may order a User that has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit or order issued hereunder or any other Pretreatment Standard or Requirement, to appear before the Director and show cause why the City should not take the proposed enforcement action, including the assessment of administrative fines and costs. The Director shall serve notice on the User specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and requesting that the User show cause why the proposed enforcement action should not be taken. The Director shall serve notice of the hearing by certified mail (return receipt requested) at least five (5) days prior to the hearing. The Director may serve such notice on any Authorized Representative of the User. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User. A User may seek review of a Show Cause Hearing determination and request an Administrative Appeal Hearing within ten (10) days following receipt of Show Cause Hearing decision. The Administrative Appeal Hearing shall be conducted according to procedures described in Section 14.11.710. (Ord. 35, 2008 §1)

14.11.600 — Consent orders.

The Director may enter into a consent order, an assurance of voluntary compliance or other similar document establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action for the User to take to correct the noncompliance within a specified time period. Such documents shall have the same force and effect as the compliance orders issued pursuant to Section 14.11.580, may contain an agreement as to payment of fines and costs and shall be judicially enforceable. (Ord. 35, 2008 §1)

14.11.610 — Cease and desist orders.

(a) — When the Director determines: that a User has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit or order issued hereunder, or any other Pretreatment Standard or Requirement; that the User's past violations are likely to recur; or that the User's Discharge endangers the environment or threatens to interfere with the operation of the POTW; the Director may, after formal notice to the User and an opportunity to be heard under Section 14.11.590, order the User to cease and desist all such violations and direct the User to:

(1) — Immediately comply with all requirements; and

(2) — Take such appropriate remedial or preventive action necessary to properly address a continuing or threatened violation, including halting operations and/or terminating the Discharge.

(b) — When the Director determines that a User's Discharge imminently threatens human health or welfare, the Director may, after informal notice to the User, order the User to cease and desist such threat and direct the User to:

(1) — Immediately comply with all requirements; and

(2) — Take such appropriate remedial or preventive action necessary to properly address the imminent threat, including halting operations and/or terminating the Discharge.

(c) — A User may seek review of a cease and desist order according to procedures described in Section 14.11.710. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User. (Ord. 35, 2008 §1)

14.11.620 — Administrative fines.

Following the issuance of a Notice of Violation, a Compliance Order or Order to Show Cause, the Director may fine a User in an amount not to exceed one thousand dollars (\$1,000.00) per violation. The Director shall determine the applicable fine using the City's Administrative Penalty Evaluation Form and Administrative Penalty Matrix. Each day on which noncompliance occurs, or continues, shall constitute a separate and distinct violation. In the case of monthly or other long-term average Discharge limits, the Director may assess fines for each day during the period of violation. The Director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(1) — The Director may add unpaid charges and fines to the User's next scheduled sewer service charge or utilize other collection remedies. All unpaid fines and charges shall constitute a lien against the User's property. In that case, the Director

of Finance shall file such lien to protect the City's interest. Fines and charges remaining unpaid for sixty (60) calendar days shall accrue interest at the rate set forth in Section 4.04.319 of this Code on the unpaid balances.

(2) — Issuance of an administrative penalty shall not be a bar against, or a prerequisite for, taking any other action against the User. (Ord. 35, 2008 §1)

14.11.630 — Delinquent payment of administrative fines and costs; notice before collection action.

Before filing a civil action to collect one (1) or more delinquent penalty assessments, the Director shall send a notice to the responsible party or parties, which advises the party or parties of the nature of the violation that resulted in a civil penalty, the dates on which violations occurred, the original due date of the penalty assessment and the amount of the penalty, including any delinquency charges. The notice shall further advise the responsible party or parties that, unless payment of all assessments is made to the City within ten (10) days of the date of the notice, civil action to collect the delinquent amounts may be filed in a court of competent jurisdiction for collection of such assessments. (Ord. 35, 2008 §1)

14.11.640 — Delinquent payment of administrative fines and costs; collection action initiation.

If the City does not receive full payment of all fines and costs following the notice provided for in Section 14.11.630, the City Attorney shall file civil action for collection in the appropriate court. Any inaccuracy or omission in the notice under Section 14.11.630 shall not bar or serve as a defense to the civil action. Any such defect may result in the disallowance of interest until the City perfects notice. (Ord. 35, 2008 §1)

14.11.650 — Liability for expenses and fines.

Any User violating this Chapter shall be liable for any expense, loss or damage caused the POTW by reason of such violation, including increased costs for sewage treatment, biosolids treatment and disposal, and POTW operation and maintenance expenses resulting from the User's Discharge. If a User discharges pollutants that cause the State to fine the City for violating any condition of its CDPS permit, the Discharger shall indemnify the City for the total cost of the fine, including, without limitation, all legal, sampling, analytical and other associated costs and expenses. (Ord. 35, 2008 §1)

14.11.660 — Injunctive relief.

When the Director finds that a User has violated, or continues to violate, any provision of this Chapter, a Wastewater Discharge Permit, an order issued hereunder or any other Pretreatment Standard or Requirement, the Director may petition the appropriate court, through the City Attorney, to issue a temporary or permanent injunction, as appropriate, to restrain or compel the specific performance of the Wastewater Discharge Permit, order or other requirement imposed by this Chapter on activities of the User. The Director may also seek such other action appropriate for legal and/or equitable relief, including requiring the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User. (Ord. 35, 2008 §1)

14.11.670 — Criminal prosecution.

(a) — A User who knowingly or negligently violates any provision of this Chapter, a Wastewater Discharge Permit or order issued hereunder, or any other Pretreatment Standard or Requirement, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) per violation per day or imprisonment for not more than one (1) year, or both. Each day, or portion thereof, that a person commits, continues or allows a violation of any provision of this Chapter, Wastewater Discharge Permit or order issued hereunder, or any other Pretreatment Standard or Requirement, shall constitute a separate offense and is punishable accordingly.

(b) — A User who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other documentation filed or required to be maintained pursuant to this Chapter, a Wastewater Discharge Permit or order issued hereunder, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation per day, or imprisonment of not more than one (1) year, or both. (Ord. 35, 2008 §1)

14.11.680 — Remedies nonexclusive.

The remedies provided for in this Chapter are not exclusive. The Director may take any, all or any combination of these actions against a noncompliant User as permitted by law. The City's Enforcement Response Guide will direct enforcement of

~~Pretreatment Violations. However, the Director may take other action against any User when the circumstances warrant. Interested parties may obtain copies of the City's Enforcement Response Guide from the Director. (Ord. 35, 2008 §1)~~

~~14.11.690 — Performance bonds.~~

~~The Director may decline to issue or reissue a Wastewater Discharge Permit to any User who has failed to comply with any provision of this Chapter, a previous Wastewater Discharge Permit or order issued hereunder, or any other Pretreatment Standard or Requirement, unless such User first files a bond or other financial instrument acceptable to the Director of Finance and payable to the City, in a sum not to exceed a value that the Director determines to be necessary to achieve consistent compliance. (Ord. 35, 2008 §1)~~

~~14.11.700 — Water supply severance.~~

~~The Director may discontinue water service to any User who has violated or continues to violate any provision of this Chapter, a Wastewater Discharge Permit or order issued hereunder, or any other Pretreatment Standard or Requirement. Service will only recommence, at the User's expense, after it has satisfactorily demonstrated its ability to comply. Within ten (10) days following discontinuance of water service, the User may request a hearing which shall be held in accordance with Section 14.11.710. (Ord. 35, 2008 §1)~~

~~14.11.710 — Administrative appeal hearings.~~

~~Any User may petition the Director to reconsider ("Administrative Appeal") a Notice of Violation, Order, Penalty or any other enforcement action in this Chapter within ten (10) days of the receipt of the Notice of Violation or other enforcement action.~~

~~(1) — Failure to submit a written petition for review within such ten-day period shall constitute a waiver of the right to the Administrative Appeal.~~

~~(2) — In its written petition, the appealing party must indicate the enforcement actions objected to, the reasons for this objection and any proposed alternative action.~~

~~(3) — Only the challenged portions of the final enforcement action shall be stayed pending an appeal.~~

~~(4) — The Director shall serve notice of the hearing by certified mail (return receipt requested) of the location, date and time of the Administrative Appeal Hearing at least five (5) days prior to the hearing.~~

~~(5) — The Director shall issue a written decision on the petition within twenty (20) days after the Administrative Appeal Hearing.~~

~~(6) — Aggrieved parties may seek review of the Director's decision by filing a written request with the Director within thirty (30) days of the date of such final decision, asking that the Director's written decision be sent to the Water and Sewer Board. The Director shall submit his or her written decision to the Water and Sewer Board within thirty (30) days of receiving the request. The Water and Sewer Board shall make its decision based on the administrative record. The Water and Sewer Board may elect to decline to issue a decision on the User's appeal. If the Water and Sewer Board so elects, the User's appeal shall be directed to the Administrative Hearing Officer.~~

~~(7) — Aggrieved parties seeking review of the Water and Sewer Board's decision on the administrative record must do so by filing a request and fee hearing with the Administrative Hearing Officer, as authorized by Section 3-11 of the City Charter within thirty (30) days after the decision of the Board. Such review shall be *de novo*, and the Administrative Hearing Officer's decision shall be final. Administrative Hearing Officer decisions not to reconsider an enforcement action shall be considered the final administrative action for purposes of judicial review. The Administrative Hearing Officer shall conduct the hearing in accordance with the procedures set forth in Chapter 2.09 and in the Administrative Hearing Officer Rules and Regulations. The Administrative Hearing Officer may assess fines and issue orders consistent with the provisions of this Chapter. To the extent this Chapter is inconsistent with Chapter 2.09 or the Administrative Hearing Officer Rules and Regulations, this Chapter shall govern.~~

~~(8) — Any appeal from the decision of the Administrative Hearing Officer shall be to the appropriate court pursuant to C.R.C.P. 106. (Ord. 35, 2008 §1)~~

~~14.11.720 — Upset.~~

~~(a) — For purposes of this Chapter, *Upset* means an exceptional incident that results in unintentional and temporary noncompliance with a Categorical Pretreatment Standard because of factors beyond the reasonable control of the User. An~~

~~Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.~~

~~(b) — An Upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards, provided that the User immediately notifies the Director upon discovery of the Upset, and meets the requirements of Subsection (c) below.~~

~~(c) — A User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:~~

~~(1) — An Upset occurred and the User can identify its cause(s);~~

~~(2) — The facility was, at the time, being operated in a prudent and professional manner and in compliance with applicable operation and maintenance procedures; and~~

~~(3) — In addition to the immediate notice required in Subsection (b) above, the User submitted the following information to the Director within twenty-four (24) hours of becoming aware of the Upset:~~

~~a. — A description of the Indirect Discharge and cause of noncompliance;~~

~~b. — The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;~~

~~c. — Steps the User is taking or plans to take to reduce, eliminate and prevent recurrence of the noncompliance; and~~

~~d. — If the User initially provided the foregoing information orally, the User must submit it in writing within five (5) days.~~

~~(d) — In any enforcement proceeding, the User seeking to establish the affirmative defense of an Upset shall have the burden of proof.~~

~~(e) — A User will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.~~

~~(f) — A User shall control all Discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss or failure of its treatment facility until restoring the facility or providing an alternative method of treatment. This requirement applies in the situation, among others, where the User partially or completely loses power to its treatment facility. (Ord. 35, 2008 §1)~~

~~14.11.730 — Affirmative defense.~~

~~A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the General Prohibition in Subsection 14.11.070(b) or the Specific Prohibitions in Subsection 14.11.070(c), if it can prove that it did not~~

know, or have reason to know, that its Discharge, alone or in conjunction with Discharges from other sources, would cause Pass Through or Interference and that either:

(1) — A local limit exists for each Pollutant discharged, and the User complied with each limit directly prior to and during the Pass Through or Interference; or

(2) — No local limit exists, but the Discharge did not change substantially in nature or constituents from the User's prior Discharge when the City was regularly in compliance with its CDPS permit and, in the case of Interference, was in compliance with applicable sludge use or disposal requirements. (Ord. 35, 2008 §1)

14.11.740 — Bypass.

(a) — For the purposes of this Section:

Bypass means the intentional diversion of wastestreams from any portion of a User's treatment facility.

Severe property damage means substantial physical damage to property, damage to the treatment facility that renders it inoperable or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a Bypass. *Severe property damage* does not mean economic loss caused by delays in production.

(b) — A User may allow any Bypass to occur that does not violate a Pretreatment Standard or Requirement, but only if such Bypass is necessary for essential maintenance to assure efficient operation. These bypasses are not subject to Subsections (c) and (d) of this Section.

(c) — If a User knows in advance of the need for a Bypass, it shall notify the Director at least ten (10) days before the date of the Bypass or at the earliest possible time the User becomes aware of the Bypass need if less than ten (10) days prior to the Bypass.

(d) — A User shall orally notify the Director of an unanticipated Bypass that exceeds applicable Pretreatment Standards immediately upon becoming aware of the Bypass, but in no case later than twenty-four (24) hours from the time it becomes aware of the Bypass. The User must also submit a written report within five (5) days of the time it becomes aware of the Bypass. The report shall describe the Bypass and its cause; state the duration of the Bypass, including exact dates and times, and, if the Bypass has not been corrected, its anticipated duration; and steps taken or planned to prevent reoccurrence of the Bypass.

(e) — Bypass is prohibited, and the Director may take enforcement action against a User for a Bypass, unless:

(1) — The Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;

(2) — There was no feasible alternative to the Bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. (This condition is not satisfied if adequate back-up

equipment should have been installed in the exercise of reasonable engineering judgment to prevent a Bypass that occurred during normal periods of equipment downtime or preventive maintenance.); and

(3) — The User submitted the notices required under Subsection (c) of this Section;

(f) — The Director may approve an anticipated Bypass, after considering its adverse effects, if the Director determines that the Bypass will meet the three (3) conditions listed in Subsection (d) of this Section. (Ord. 35, 2008 §1)

14.11.750 — Pretreatment charges and fees.

The City may assess reasonable fees and charges through rules or other means to recoup the costs of administering its Pretreatment Program, which may include:

(1) — Fees for Wastewater Discharge Permit applications, including the cost of processing such applications;

(2) — Fees for monitoring, inspection and surveillance procedures, including the cost to collect and analyze a User's Discharge samples and to review monitoring reports submitted by Users;

(3) — Fees for reviewing accidental Discharge procedures;

(4) — Fees for filing appeals; and

(5) — Other fees that the City may deem necessary to carry out the requirements contained herein.

These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines and penalties chargeable by the City. (Ord. 35, 2008 §1)

14.11.760 — Severability.

If any provision of this Chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect. (Ord. 35, 2008 §1)

14.11.770 — Signatories and certification.

(a) — All Wastewater Discharge Permit applications and User reports must be signed by an Authorized Representative of the User and contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(b) — *Annual Certification for Nonsignificant Categorical Industrial Users*—A facility that the Director determines is a Nonsignificant Categorical Industrial User as defined in Section 14.11.060 must annually submit to the POTW the following

certification signed by an Authorized Representative of the User. This certification must accompany an alternative report required by the Director:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Categorical Pretreatment Standards under 40 C.F.R. _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____, to _____, _____, {months, days, year}:

- (1) The facility described as _____ {facility name} met the definition of a Nonsignificant Categorical Industrial User as described in Section 14.11.060.
- (2) The facility complied with all applicable Pretreatment Standards and Requirements during this reporting period; and
- (3) The facility never discharged more than one hundred (100) gallons of total categorical Wastewater on any given day during this reporting period.

This compliance certification is based upon the following information:

OFFICIAL SIGNATURE

(Ord. 35, 2008 §1)

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City of Greeley, Colorado
Industrial Pretreatment Program
Substantial Modification Submittal

1.1.4. Draft Legal Authority in Final Format.

DRAFT

~~[NOTE: THIS WILL BE ADDED AFTER INITIAL REVIEW AND COMMENT BY EPA]~~

Commented [JK3]: Add Final from Jerrae

DRAFT

City of Greeley, Colorado
Industrial Pretreatment Program
Substantial Modification Submittal

1.1.5. ~~New Forms/Procedures~~ Revised Enforcement Response Plan

DRAFT