

**City of Greeley
Water and Sewer Board
Minutes of February 17, 2021
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, February 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, Mayor Gates, Roy Otto, and John Karner

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 Petrzeka, Rates and Budget Analyst Kalen Myers, Special Projects Engineer Mary Gearhart, Office Manager Shannon Metcalf and Senior Administrative Specialist Ettie Arnold

Legal Counsel:

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

Other Guests:

Cortney Brand of Leonard Rice Engineering, Samantha Kepley of Brown and Caldwell, Jason Assouline of Carollo Engineers, Christopher Wolf of Daniel B. Stevens and Associates and Dr. Patrick Longmire

2. Approval of Minutes

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Mr. Miller made motion, seconded by Mr. Otis, to approve the January 20, 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.

4. Welcome New Employees

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

5. Public Comments

Ms. Arnold read a letter of support for the Terry Ranch Project submitted by the Home Builders Association of Northern Colorado.

6. Approve the Amended and Restated Master Purchase, Sale and Raw Water Credit Administration Agreement for Terry Ranch Water Rights and Storage

Mr. Jokerst explained that in June 2020, Greeley entered into the Master Purchase, Sale and Raw Water Credit Administration Agreement for the purchase of groundwater rights and associated water storage underlying the Terry Grazing Association Ranch in northwest Weld County. Since that time, staff and internal and external legal counsel have identified certain minor revisions to Master Agreement they wish to adopt prior to the closing. The amendments do not substantively change the structure, deal terms, or obligations of either Greeley or Wingfoot. A summary of the amendments are as follows:

1. Changed the timeline for conveyance of the Access Easement to the Terry Grazing Association lands. Instead of including the Access Easement in the tenancy in common and periodically assigned along with the Water Rights, all of Wingfoot's rights, title, and interest in the Access Easement will be conveyed to Greeley at closing.
2. Clarified the rights of a third-party assigned the Put Option under the Master Agreement. Wingfoot intends to assign the Put Option to an affiliated third-party and use said third-party to borrow against Put Option Credits placed in escrow in order to fund the initial \$25 million payment to Greeley at Closing. This change allows the transfer of certain rights under Article 11 of the Master Agreement and the Credit Escrow from the third-party to an indenture trustee, to secure the lender's interest under Article 11 of the Master Agreement and the Credit Escrow.
3. Changed the date that Greeley must exercise the Call Option from July 1st of each year to June 8th to allow additional time for the third-party and the indenture trustee to determine whether or not the Put Option should be exercised.

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4. Clarified the process for issuance and assignment of the Escrowed Credits at closing given Wingfoot's anticipated assignment of the Call Option at or shortly after closing.
5. Made clear that the rights and obligations under the Master Agreement have vested in the parties
6. Corrected typos, formatting, and other minor inconsistencies.

Mr. Jokerst explained that the exhibits to the Master Agreement will be revised to comport with the amended and restated Master Agreement if approved.

Vice-Chairman Todd made motion, seconded by Mr. Otis to approve the Amended and Restated Master Purchase, Sale and Raw Water Credit Administration Agreement, effective as of June 23, 2020, and to authorize the Director, or his designee, to amend the exhibits consistent therewith and to make minor amendments to the agreement, including but not limited to, contract deadline extensions. The motion carried 7-0.

7. Approve a Resolution Authorizing Closing for Terry Ranch Water Rights and Storage and Recommend the Same to City Council

Mr. Chambers introduced Mr. Jokerst along with Mr. Brand, Ms. Kepley, Mr. Assouline, Mr. Wolfe and Dr. Longmire. Collectively, they explained that in June 2020, Greeley entered into a Master Purchase, Sale and Raw Water Credit Administration Agreement with Wingfoot Water Resources, LLC for acquisition of groundwater rights and associated water storage underlying the Terry Grazing Association Ranch in northwest Weld County. Since that time, staff and consultants have undertaken extensive inspection and diligence activities to confirm the water resources offered in this purchase are safe and reliable. They provided a summary findings of the diligence and inspection studies conducted over the past eight months, results of peer reviews by third-party experts, and final recommendations of staff and consultants.

The inspection studies showed the following:

- The Terry Ranch groundwater can safely and reliably be used as a new potable water supply source for the City of Greeley.
- The Upper Laramie Aquifer underlying Terry Ranch is suitable for injection and storage of surface water.
- Acting as a drought supply, the Terry Ranch Project can supplement Greeley's surface water supply system and meet projected 2065 water demands.
- Quality of Terry Ranch groundwater is high. It contains low-levels of naturally occurring uranium, but the uranium can be removed below detection with ion exchange treatment.
- No adverse water quality reactions are expected by blending Terry Ranch water with Greeley's existing treated water sources.

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- Introduction of Terry Ranch water into Greeley's existing water supply system is not anticipated to cause corrosion to or release of metals from distribution system piping.
- The risk of contamination to the Upper Laramie Aquifer is at present very low.
- The Terry Ranch Project requires pumping and treatment, the operational costs of which will be higher than Greeley's existing water treatment and conveyance systems. However, the higher operational costs are vastly outweighed by lower capital costs.
- The expected cost to Greeley of building the Terry Ranch Project infrastructure for the 2065 planning horizon is \$256 million in escalated, 2020 dollars.
- Additional testing and monitoring is recommended to refine design, costs, operations, and treatment processes.
- No fatal flaws were identified in due diligence.

Greeley hired third-party engineering firms to independently peer-review the due diligence and study data. The peer reviewers generally concurred with the diligence efforts and did not identify any fatal flaws.

Vice-Chairman Todd made motion, seconded by Mr. Ruyle to Approve a Resolution Authorizing Closing for Terry Ranch Water Rights and Storage and Recommend the Same to City Council. The motion carried 7-0.

8. Approve a Resolution Rescinding Prior Water & Sewer Board Resolutions Concerning Dedication of Raw Water for City Services

Mr. Jokerst explained that the City requires that developers dedicate certain water rights or make cash payments to the City in order to receive City water service. Raw Water Dedication policies are primarily located in the City of Greeley Municipal Code Chapter 6, Title 14, but are also contained in several resolutions of the Greeley Water & Sewer Board. The Water & Sewer Department desires to consolidate all policies into Municipal Code to provide developers and staff a single point of reference. In addition, consolidation ensures adequate public notice of future Raw Water Dedication policy changes pursuant to the Master Purchase, Sale and Raw Water Credit Administration Agreement for the purchase of groundwater rights, groundwater storage, and appurtenances contemplated by the Terry Ranch Project.

Revisions to Municipal Code concerning Raw Water Dedication policies will incorporate Water & Sewer Board Resolution 14, 2014; Resolution 2, 2016; Resolution 1, 2019; and Resolution 3, 2020. Once incorporated in Municipal Code, the listed Water & Sewer Board Resolutions must be rescinded so as to not duplicate Raw Water Dedication Requirements. In addition to consolidation, the City Council ordinance makes three revisions to Greeley's Raw Water Dedication policies. The first revision is necessitated by the Terry Ranch Master Agreement. The Master Agreement creates Raw Water Credits redeemable to meet Greeley's Raw Water Dedication requirements. A code

revision is required to allow dedication of Credits and is a condition of closing on the Terry Ranch Project. The second revision codifies graduated raw water requirements for landscaping associated with commercial and multi-family developments, and third clarifies that Raw Water Dedication for large parcel, single family developments is only required for the developed portion of the lot.

Mr. Miller made motion, seconded by Vice-Chairman Todd to Approve a Resolution Rescinding Prior Water & Sewer Board Resolutions Concerning Dedication of Raw Water for City Services. The motion carried 7-0.

9. Approve Colorado Water Conservation Board Water Delivery Agreement

Ms. Petrzeka explained that since 2014, a subcommittee of the Poudre River Runs through It Group has been working to develop an innovative way to increase flows in the Poudre River through an Instream Flow Augmentation Plan. Through the coordination and cooperation of the City of Greeley, City of Fort Collins, City of Thornton, Northern Water, CO Water Trust, Colorado Water Conservation Board and the Colorado Parks and Wildlife, the dedication of initial seed water rights for the Plan was approved by the CWCB at their January Board meeting. Use of water rights in the Instream Flow Augmentation plan requires a Water Delivery Agreement with the CWCB, which agreement defines the terms and conditions by which the water rights will be used by the CWCB in the Plan. The proposed Water Delivery Agreement allows Greeley to identify an amount to be used in the Plan year to year.

Vice-Chairman Todd made motion, seconded by Mr. Miller to Approve the Colorado Water Conservation Board Water Delivery Agreement. The motion carried 7-0.

10. 2020 Year End Water & Sewer Enterprise Financial Report

Ms. Myers presented the year-end summary of water and sewer revenues and operating expenditures. Water rate revenue was up 18% over budgeted targets due to a hot, dry summer. Similarly, sewer rate revenue came in 4% over budget. Plant investment fee revenue for both water and sewer fell well below budgeted targets, down 57% from 2019 for water and -56% for sewer due to a sharp decrease in development activity from COVID-19. Overall, 2020 water revenues were up 7% over 2019 totals while 2020 sewer revenues were down 8% from last year.

11. Legal Report

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

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Statements of Opposition: Based on review of the December, 2020 Water Court Resume, Ms. Burr reported that staff and water counsel recommend that the Board authorize filing statements of opposition in the following cases:

- a. **Case number 20CW3208**, Application of HF2M, Inc. for water rights, change of water rights, plan for augmentation, and appropriative rights of exchange on the Cache la Poudre River. The claims are for the Montava West/East Wellfield: 900 gpm conditional, Seaworth Augmentation Pond No. 2: 140 af (filled via Taylor and Gill Ditch: 13.81 cfs & Seaworth River Diversion: 5.0 cfs). The applicant is seeking water rights to supply potable water to a 1,000 acre development east of Fort Collins. There are several different components to this application.
- b. **Case number 20CW3213**, Applicant of TH Ranch for conditional surface, storage and groundwater rights, change of water right, request to renew irrigation of lands previously removed from irrigation, appropriation of return flows, and for approval of plan for augmentation on the South Platte River. The claims are for the TH 17 Ranch River Pump (5,000 gpm conditional), Helton Reservoir (99.75 acre-feet conditional), TH Ranch River Well (950 gpm conditional), and change one share of Lower Latham Ditch stock. Additionally, the applicant is seeking to renew irrigation of lands previously removed from irrigation via a dry-up covenant. Greeley should get involved to insure a change in use will not affect the call regime on the South Platte River and/or Greeley's current operations.
- c. **Case number 20CW3215**, Application of BennT Creek Regional Water Authority and SP Regional Water Company, LLC; Town Bennett and Todd Creek Village Metropolitan District for conditional surface water rights and water storage rights on the South Platte river. The claims are for SP Diversions: 200 cfs cumulative, conditional; GB-1 Reservoir: 9,520 af, conditional; Beaver Creek Surface Reservoir: 80,900 af, conditional; Sand Arroyo Reservoir: 22,400 af, conditional; Bennet Reservoir: 300 af, conditional; Signal Reservoir No. 3: 1,970 af, conditional; Signal Reservoir No. 4: 4,824 af, conditional; Mann Lakes Reservoir: 3,741 af, conditional; Beaver Creek Porosity Reservoir: 81,216 af, conditional.

Mr. Miller made a motion, seconded by Vice-Chairman Todd, that the Board authorize the filing of statements of opposition in Case No. 20CW3208, Case No. 20CW3213 and Case No. 20CW3215, for staff and legal counsel to seek resolution of issues raised by these cases consistent with Water and Sewer Board Resolution No. 3 (2015). The motion carried 7-0.

12. Director's Report

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Mr. Chambers reported on the following items:

- Windy Gap Firing Storage Project, appeal of the recent Federal District Court Order
- City Charter Petitions

16. 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 5:25 p.m.

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Harold Evans

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Harold Evans, Chairman

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Shannon Metcalf

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Shannon Metcalf, Office Manager