

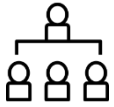
Water and Sewer Board

Regular Meeting

City Council Chambers – City Center South

1001 11th Avenue – Greeley, Colorado

September 20, 2023 at 2:00 p.m.



Regular meetings of the Water and Sewer Board are held **in person** on the 3rd Wednesday of each month in the City Council Chambers, 1001 11th Avenue, Greeley, Colorado.



Members of the public may attend and provide comment during public hearings.



Written comments may be submitted by US mail or dropped off at the Water and Sewer office located at 1001 11th Avenue, 2nd Floor, Greeley, CO 80631 or emailed to wsadmin@greeleygov.com. All written



comments must be received by 10:00 a.m. on the date of the meeting.

Meeting agendas and minutes are available on the City's meeting portal at [Greeley-co.municodemeetings.com/](https://greeley-co.municodemeetings.com/)

IMPORTANT – PLEASE NOTE

This meeting is scheduled as an **in-person session only**. If COVID, weather, or other conditions beyond the control of the City dictate, the meeting will be conducted virtually and notice will be posted on the City's MuniCode meeting portal by 10:00 a.m. on the date of the meeting (<https://greeley-co.municodemeetings.com/>).

In the event it becomes necessary for a meeting to be held virtually, use the link below to join the meeting. Virtual meetings are also livestreamed on YouTube at <https://www.youtube.com/CityofGreeley>.

For more information about this meeting or to request reasonable accommodations, contact the administrative team at 970-350-9801 or by email at wsadmin@greeleygov.com



September 20, 2023 at 2:00 PM
1001 11th Avenue, City Center South, Greeley, CO 80631

Agenda

1. Roll Call: _____ Chairman Harold Evans _____ Vice Chairman Mick Todd
 _____ Ms. Cheri Witt-Brown _____ Mr. Fred Otis
 _____ Mr. Joe Murphy _____ Mr. Tony Miller
 _____ Mr. Manuel Sisneros _____ Mayor John Gates
 _____ Mr. Raymond Lee _____ Mr. Rodney Rhoades
2. Approval of Minutes
3. Approval of the Agenda
4. Welcome New Employees and Promotions
5. Approval of the Lowell Property Hunting License
6. Introduction to Water Development Code Policy
7. 60" Bellvue Transmission Pipeline and FEMA BRIC Grant Update
8. Water Court Update
9. Legal Report
10. Director's Report
11. Such Other Business That May Be Brought Before the Board Added to This Agenda by Motion of the Board.
12. Adjournment



If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact the Water and Sewer Department administrative staff at 970-350-9801 or wsadmin@greeleygov.com

**City of Greeley
Water and Sewer Board
Minutes of August 16, 2023
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, August 16, 2023.

1. Roll Call

The Clerk called roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Cheri Witt-Brown, Fred Otis, Tony Miller, Manuel Sisneros, Mayor John Gates, Deputy City Manager Donald Tripp on behalf of City Manager Raymond Lee, Interim Director of Finance Tammy Hitchens

Water and Sewer Department staff:

Director Sean Chambers, Deputy Director of Water Resources Ty Bereskie, Deputy Director of Utility Finance and Customer Service Erik Dial, Office Manager Gigi Allen, Administrative Assistant III Crystal Sanchez, Water Resource Administrator II Alex Tennant, Water Resource Administrator I Megan Kramer, Water Resource Operations Manager Leah Hubbard, Instrument and Control Supervisor Mat Finch, Water & Sewer Intern I Alex Merklein, Water Conservation Manager Dena Egenhoff, Water Resource Administrator III Matt Sparacino.

Legal Counsel:

Senior Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney II Dan Biwer, Environmental and Water Resources Attorney I Arthur Sayre, Counsel to Water & Sewer Board Attorney Carolyn Burr.

Guests:

Emeritus Robert Ruyle, Councilmember Deb DeBoutez, James Sutherland from Wingfoot

2. Approval of Minutes

Mr. Miller made a motion to approve, noting that the minutes should reflect Board member Cheri Witt-Brown was in attendance at the July 2023 meeting and seconded by Vice Chairman Todd the approval of the July 19, 2023 Water and Sewer Board meeting minutes. The motion carried 5-0.

3. Approval of Agenda

There were no changes to the Agenda.

4. Welcome New Employees and Promotions

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

5. Approve First Amendment to Reimbursement Agreement with CPRW

Matt Sparacino introduced the importance of watershed health and wildfire recovery work needed to protect Greeley water resources and water quality. Mr. Sparacino shared that Greeley and the Coalition for the Poudre River Watershed Coalition (CPRW) have a strong common interest in protecting the Poudre River Watershed and desire to continue coordinating recovery measures and mitigation efforts in response to the Cameron Peak Fire. CPRW has received previous funding from various sources, including the Community Foundation of Northern Colorado and the Colorado Water Conservation Board. The work covered under the agreement and this First Amendment is not being funded by the City of Greeley or its Water enterprise; it is a pass-through agreement.

This First Amendment to the Reimbursement Agreement for Wildfire Mitigation and Rehabilitation Services adds United States Forest Service funding to be made available to CPRW under a Participating Agreement. CPRW and Greeley have agreed to use contractors procured under Greeley contracts for upcoming work. Greeley will pay the contractor per the terms of its contract and secure reimbursement from CPRW under this agreement.

Vice Chairman Todd moved that Board approve the First Amendment to the Reimbursement Agreement for Wildfire Mitigation and Rehabilitation Services with CPRW in the form enclosed, and delegate authority to the Director of Water and Sewer to approve minor amendments and extensions to the agreement, including, without limitation, amendments to include additional sources of funding, provided the material substance of the agreement remains unchanged. Mr. Otis seconded the motion. Motion carried 6-0.

Chief Engineer Adam Prior joined the meeting at 2:17 pm.

6. Approve Augmentation Water Lease Agreement with the Town of Eaton

Alex Tennant discussed The Town of Eaton approached Greeley staff with a need to augment two wells in their town parks under the Colorado Division of Water Resources groundwater well requirements. Eaton will use this agreement with Greeley to implement an augmentation plan with DWR for lagged depletions. The amount of water per year under the proposed lease is 15 AF, broken down into a monthly release schedule and is to be delivered to calling rights

on the Cache La Poudre or South Platte rivers below the Eaton Draw. Greeley staff confirmed they can make the augmentation releases either from Poudre Ponds or other wholly consumable effluent credits from the WTRF. Per the schedule provided by Eaton, monthly releases do not exceed 1.69 AF in a given month which staff feels comfortable accommodating the limited duration ten-year lease period. The cost is \$800/AF which falls under Greeley's policy for non-agricultural water rentals of wholly consumable supplies.

Chairman Evans asked for insight on how the staff determined the amount of \$800 an acre foot. The City's staff stated that the amount is in current departmental lease policy for this type of water. Water Resources staff noted that the subject policy will be up for review within the next 18 months, and the goal is to revise the policy to be more market driven and flexible year to year.

Vice Chairman Todd moved to approve the Augmentation Water Lease Agreement with The Town of Eaton. Mr. Miller seconded the motion. The motion carried 6-0.

7. Water Supply Update

Alex Tennant presented Greeley's water supply status. The presentation consisted of spring and early summer climate recap, current storage amounts, weather forecast through 2023, and the agricultural rental summary.

8. SCADA Telemetry & Controls Upgrades and Master Plan

Mat Finch presented an update to the Board on Water & Sewers SCADA system, the new EPA ruling and the SCADA master plan.

9. Legal Report

Based on Staff and outside councils review of the June, 2023 Water Division 1 Resume, staff and water counsel recommend that the Water and Sewer Board file statements of opposition to the following water court cases.

1. **Case Number: 23CW3074:** Applicant, Arapahoe County Water and Wastewater Authority, is seeking a finding of reasonable diligence for the following rights associated with 70 Ranch Reservoir: 100 cfs bi-directional pipeline; 3,000 a.f. first fill and 3,000 a.f. refill storage right. Applicant claims 51.85 cfs of the 100 cfs bi-directional pipeline and 1,596.9 acre feet of the 3,000 acre-foot first fill of 70 Ranch Reservoir absolute. Water stored in ACWWA's 70 Ranch Reservoir can be exchanged up the confluence of the South Platte and Cache la Poudre, and from there up the Cache la Poudre. We recommend filing a statement of opposition to ensure that the water being claimed as absolute has been diverted and stored in the quantities claimed and Applicant is using the water consistent with the terms of its decree.

2. **Case Number: 23CW3075:** Applicant, East Cherry Creek Valley Water & Sanitation District, is seeking a finding of reasonable diligence for the following rights associated with 70 Ranch Reservoir: 100 cfs bi-directional pipeline; 3,000 a.f. first fill and 3,000 a.f. refill storage right. Applicant claims 51.85 cfs of the 100 cfs bi-directional pipeline and 1,596.9 acre feet of the 3,000 acre-foot first fill of 70 Ranch Reservoir absolute. Water stored in ACWWA's 70 Ranch Reservoir can be exchanged up the confluence of the South Platte and Cache la Poudre, and from there up the Cache la Poudre. We recommend filing a statement of opposition to ensure that the water being claimed as absolute has been diverted and stored in the quantities claimed and Applicant is using the water consistent with the terms of its decree.
3. **Case Number: 23CW3078:** Applicant, the Handy Ditch Company is seeking to make Welch Reservoir an alternate point of storage for Hertha Reservoir. Sources for Hertha Reservoir: Knaus Creek, Dry Creek, tributaries to the Big Thompson. Hertha Reservoir is decreed for 2,729 acre-feet. Pursuant to the application, water delivered to Hertha Reservoir under the Hertha Reservoir Rights may continue to be stored in Hertha or may be delivered via Hertha Reservoir to Welch Reservoir for storage and use within the Handy Ditch System for the presently decreed uses. Applicant does not seek a change in point of diversion, type of use or place of use for the Hertha Reservoir Rights. We recommend filing a statement of opposition to ensure terms and conditions that will protect Greeley's interests in the GLIC system.
4. **Case Number: 23CW3079:** Application by Bryant and Kelsey Mundt claiming a 2019 storage right of 80.4 acre feet with one refill in Mundt Reservoir. The source of the water is seepage from the Larimer County Canal and surface inflows from precipitation that would otherwise accrue to the Poudre. Applicants are also claiming a plan for augmentation to replace out of priority depletions caused by the reservoir using water leased from the Lake Canal Reservoir Company. We recommend filing a statement of opposition to protect Greeley's water rights from injury due to out of priority depletions from this project.

Vice Chairman Todd moved that the Board authorize filing statements of opposition in Case Nos. 23CW3074, 23CW3075, 23CW3078 and 23CW3079, and for staff and legal counsel to seek resolution of issues raised by these cases consistent with Water and Sewer Board Resolution No. 3-15. Ms. Witt-Brown seconded the motion. The motion carried 6-0.

10. Director's Report

Sean Chambers provided the Water and Sewer Board a brief update on the following items of water utilities policy interest:

1. Water industry events

- a. Colorado Water Congress Annual Meeting– Aug. 23rd-25th
 - b. Statewide C9 Roundtable Summit – Nov. 14th
 - c. Colorado River Water User Association Annual Meeting – Dec. 13th-15th
 - d. Water Literate Leaders 2023-2024 cohort selections include several from Greeley
2. Financial Memorandum
 - a. Mr. Chambers noted that this summer had been a particularly wet year, which started with a good snow pack, plenty of water supply and which has been characterized by very low demand for irrigation water. While the city's water utility plans conservatively for revenues, this extremely wet summer has impacted rate revenue beyond expectations.
3. NCWCD Board Vacancy for Larimer County
4. Monthly W&S Utility Charts

Chairman Evans asked for a brief update on the Citizen's Tour. Leah Hubbard, Water Resource Operations Manager came to the podium and spoke about the locations that were visited, and she noted that the people who attended really enjoyed the tour and felt like it could have been a little longer. Residents especially appreciated the Wastewater Treatment Plant and Boyd Water Treatment Plant infrastructure visits. The tour started at 8:30 am and went to 1 pm. Next year's plans are to consider two Greeley Evans Transit (GET) buses and try and schedule the tour for around 6 hours.

11. Such Other Business That May Be Brought Before the Board Added to This Agenda by Motion of the Board

No other business was brought before the Board.

12. Adjournment

Chairman Evans adjourned the meeting at 3:31 pm.

Harold Evans, Chairman

Raymond Lee, Board Secretary



Water & Sewer Agenda Summary

September 20, 2023

Key Staff Contact: Sean Chambers, Water & Sewer Director

Title:

Welcome New Employees and Promotions

Summary:

New Hires: Ben Johnson – Utility Systems Analyst
Zach Moreno – WTRF Maintenance Mechanic
Justin Vogel – WTRF Maintenance Mechanic
Tyler Wells – Plant Operator A

Promotions: There are no promotions this month

Recommended Action:

Informational only

Recommended Motion:

N/A

Attachments:

None



Water & Sewer Agenda Summary

September 20, 2023

Key Staff Contact: Alex Tennant, Water Resource Administrator II

Title:

Approval of the Lowell Property Hunting License

Summary:

The City of Greeley owns the Lowell Property consisting of approximately 135 acres spread across 5 parcels. The hunting license will utilize the eastern portion of parcel B which consists of approximately 55 acres. After Water & Sewer purchased the Lowell property in 2021, the lessee reached out to staff about hunting waterfowl on the property. W&S has determined that until the City of Greeley identifies a location and begins construction on city facilities within parcel B, hunting on this property can be permitted. The lessee has been hunting at the location outlined in the lease for over 15 years and has maintained a good relationship and operation since they began hunting on the property.

Recommended Action:

Staff recommends the Water and Sewer Board approve the Lowell Property Hunting Lease.

Recommended Motion:

“I move that the Board approve the Hunting License Agreement in the form enclosed and delegate authority to the Director of Water and Sewer or his designee to renew the agreement in the future, provided the material substance remains unchanged.”

Attachments:

1. Lowell Property Hunting License
2. Hunting License (Lowell)

Lowell Property: Hunting License Agreement

September 20th, 2023



Lowell Property

- Water & Sewer acquired the Lowell Property in November of 2021 for 13.4 shares of Greeley Irrigation Company included in the sale
- Five parcels, approximately 135 acres
- Location: north of Greeley along F Street between 35th and 59th Avenues
- City staff are currently evaluating potential municipal uses of the Lowell Property



Hunting Parcel



Hunting License Terms

- **Lessee:** Mike Huston is main point of contact; Tory Hanson, Greg Taylor, Mike Slaughter, and A.J. Johnson are included to allow access if Mike is not available
- **Property:** Approximately 55 acres
- **Term:** Single year agreement: October 1st – March 31st
 - Allows for Lessee's to install and remove blind before and after waterfowl hunting season without disrupting farm operations
- **License Fee:** \$150 to cover staff time and resources to administer the lease
- **Approval Process:** Water & Sewer approval (License), Lessee approval, Release and Waiver of Liability signatures form



Recommendation

W&S staff recommends approving Hunting License Agreement and delegate authority to the Director of W&S to renew the agreement in the future



Questions?

HUNTING LICENSE AGREEMENT

This HUNTING LICENSE AGREEMENT ("Agreement") is entered into this 1st day of October 2023, by and between the CITY OF GREELEY, COLORADO, a Colorado home rule municipality acting by and through its Water Enterprise ("Greeley") and MIKE HUSTON, TORY HANSON, GREG TAYLOR, MIKE SLAUGHTER, and A.J. JOHNSON (collectively "Licensees").

Recitals

WHEREAS, Greeley owns certain real property consisting of approximately 68 acres located in Weld County, Colorado, which real property is more particularly described on Exhibits A-1 and A-2, attached hereto and incorporated herein (collectively "Property"); and

WHEREAS, the Licensees desire to use the Property the purposes of hunting waterfowl, and Greeley is willing to allow the Licensees to use the Property for such purposes under the terms of this Agreement;

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

Agreement

1. **LICENSE AND TERM.** Greeley hereby issues to the Licensees a revocable license to the Property for the purposes of hunting waterfowl. The term of this Agreement begins on the date set forth above and expires on March 31, 2024.

2. **CONSIDERATION.** Licensees shall pay to Greeley a License Amount of one hundred and fifty dollars (\$150.00) for their use of the Property. Licensees shall remit payment of the License Amount to Greeley no later than October 1, 2023.

3. **IMPROVEMENTS.** With the exception of any existing fencing, there are no structures or improvements on the Property to which the Licensees are entitled use by this Agreement.

4. **CONDITION OF PROPERTY.** Licensees have inspected the Property and acknowledge that the Property is being licensed "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 or its suitability for the Licensees' anticipated uses. In no event shall Greeley be liable for any defect in the Property or for any limitation on its anticipated uses.

5. **AUTHORIZED USE AND MANAGEMENT OF PROPERTY.** Licensees shall occupy and use the Property solely for hunting waterfowl. Licensees shall not introduce any animals or livestock to the Property other than hunting dogs without advance written consent from Greeley. Such consent may be given or withheld in the sole discretion of Greeley.

a. Licensees shall occupy and use the Property in a manner that is consistent with sound agricultural and conservation practices and supports Greeley's land management efforts.

b. Licensees shall access the Property only via F Street at the northeastern corner of the Property and park motorized vehicles only in the dirt lot located at such northeastern corner. Licensees shall not operate motorized vehicles anywhere else within the Property or on the Larson Trail.

c. Licensees shall furnish at their sole expense all materials needed for use of the Property.

d. Licensees shall not mow the Property nor trim nor cut down any trees on the Property.

e. Licensees acknowledge that 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. Licensees 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. Licensees shall not apply chemicals to the Property.

6. COVENANTS OF THE LICENSEES.

a. Licensees acknowledge that the Property and this Agreement are also subject to that certain Grazing and Farm Lease executed by and between Greeley and A & A Farming, LLC and dated February 21, 2023 ("Grazing Lease"). Licensees shall not interfere in any manner with the operations of the lessee under the Grazing Lease and shall be solely responsible for any damages incurred by the lessee under the Grazing Lease that result from the Licensees' activities pursuant to this Agreement.

b. Licensees shall each execute and return to Greeley a Release and Waiver of Liability in the form attached hereto and incorporated herein as Exhibit B in advance of occupying and using the Property as contemplated by this Agreement.

c. Licensees acknowledge that there are domestic residences and the Larson Trail in near proximity to the Property. Licensees shall not commit any act or omission to act while occupying and using the Property that could cause damage or injury to any other persons or property. Without limiting the foregoing, Licensees shall not discharge firearms in the direction of domestic residences or the Larson Trail, shall not operate motor vehicles on the Larson Trail, and shall conduct all activities pursuant to this Agreement at a minimum distance of 300 feet from the Property boundaries.

d. Beyond the hunting of waterfowl contemplated by this Agreement, the Licensees shall not intentionally harass, injure, or kill any wildlife species on the Property, including, without limitation, non-domesticated amphibians, reptiles, fish, birds, or mammals native to the Greeley area. Licensees shall promptly contact Greeley and Colorado Parks and Wildlife to address any wildlife management concerns on the Property.

e. Licensees shall occupy and use the Property, and perform their obligations under this Agreement, in strict compliance with all local, state, and federal laws, rules, charters, ordinances and regulations, as applicable now or later enacted or amended, including, without limitation, Colorado Parks and Wildlife rules and regulations concerning the hunting of waterfowl.

f. Licensees shall not assign this Agreement, sublet the Property or any part thereof, nor allow any third parties to hunt on the Property without advance written consent from Greeley. Such consent may be given or withheld in the sole discretion of Greeley. Licensees shall not pledge nor mortgage their interests in this License without the advance written consent of Greeley, which consent may be given or withheld in the sole discretion of Greeley. Licensees 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.

g. Licensees shall not construct, nor permit construction of any structure, building or other improvement, temporary or otherwise, on the Property without the advance written consent of Greeley, which consent may be given or withheld in the sole discretion of Greeley. Licensees shall not erect, paint, or maintain any signs on the Property without the advance written consent of Greeley, which consent may be given or withheld in the sole discretion of Greeley. Licensees shall promptly remove any such signs or improvements to which Greeley consents upon expiration or termination of this Agreement.

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

i. Licensees shall undertake reasonable measures to avoid the introduction of noxious weeds to the Property, including, without limitation, by cleaning equipment and vehicles before entering onto the Property.

j. Licensees shall maintain the Property in as good repair and condition as it exists at the commencement of this Agreement. Licensees shall not damage the Property in any manner whatsoever and shall promptly notify Greeley of any such damage caused and immediately restore the Property to its previous condition at their sole expense.

k. Licensees shall peaceably surrender possession of the Property to Greeley upon the expiration or termination of this Agreement.

7. INDEMNIFICATION.

a. Licensees assume the risk of loss to themselves and any personal property located on the Property during the term of this Agreement, whether from windstorm, fire, earthquake, snow, water run-off, soil conditions, or any other causes whatsoever.

b. Without limiting the Release and Waiver of Liability attached hereto as Exhibit B, the Licensees and their agents, heirs, and successors agree to jointly and severally indemnify, defend and hold harmless Greeley, and its agents, officers, and employees 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 the operations and activities of the Licensees under this Agreement.

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

8. HAZARDOUS MATERIAL.

a. Licensees shall not cause nor permit any Hazardous Material to be brought upon, kept, or used in or about the Property without the advance written consent of Greeley, which consent may be given or withheld in the sole discretion of Greeley.

b. If Licensees breach the obligations stated herein, or if the presence of Hazardous Material on the Property caused or permitted by the Licensees results in contamination of the Property, or if contamination of the Property by Hazardous Material otherwise occurs for which the Licensees are liable to Greeley for damage resulting therefrom, then the Licensees and their agents, heirs, and successors shall jointly and severally 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 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 the Licensees results in any contamination of the Property, the Licensees shall promptly

take all actions at their 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 the Federal Water Pollution Control Act, 33 U.S.C. § 1321; (v) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6903; (vi) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601; or (vii) defined as a "regulated substance" pursuant to the Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. § 6991.

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

10. TERMINATION FOR CAUSE.

a. If the Licensees fail to observe or perform any term or condition of this Agreement, then Greeley may in its sole discretion revoke the license granted by this Agreement, terminate this Agreement with immediate effect, 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 the Licensees without prejudice to any claim for rent or for the breach of covenants hereof. The Licensees and their agents, heirs, and successors agree to jointly and severally indemnify and hold Greeley harmless from and against any costs for the removal and storage of property incurred by Greeley under the provisions of this section.

b. If Greeley determines in its sole discretion that the Licensees have created a public safety hazard, then Greeley may immediately take action to secure the safe operation of the Property, including without limitation, revoking the license granted by this Agreement, terminating this Agreement with immediate effect, and/or removing the Licensees and any property belonging to the Licensees from the Property.

c. Without limiting the foregoing, the occupation or use of the Property by any individual who has not executed a Release and Waiver of Liability in the form attached hereto and incorporated herein as Exhibit B shall be grounds for Greeley to terminate this Agreement with immediate effect as described in this section.

11. STATUS OF LICENSEES. Licensees shall conduct themselves at all times under this Agreement as independent and not as employees, agents, or joint ventures of Greeley. Licensees will not be supervised by any employee or official of Greeley, nor will the Licensees exercise supervision over any employee or official of Greeley.

12. MISCELLANEOUS PROVISIONS.

a. This 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 the Licensees 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 the Licensees.

c. Licensees agree that Greeley is under no obligation to maintain the Property in a particular condition or for a particular use, and the Licensees waive all claims for damages of any kind or nature, whatsoever, resulting from the condition or suitability of the Property for its 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 Agreement.

e. The provisions of this 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. No term, condition, or covenant in this 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 the Licensees receiving services or benefits under this Agreement shall be considered an incidental beneficiary.

g. This 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 Agreement. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto.

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

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

j. This Agreement shall extend to and be binding upon the heirs and successors in interest of the parties.

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

13. **NOTICE.** Any notice required by this 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 delivery failure is received within twenty-four (24) hours, using the information set forth below. Greeley and the Licensees 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, 2nd Floor
Greeley, Colorado 80631
Email: alex.tennant@greeleygov.com

If to the Licensees: Mike Huston
1784 44th Avenue Court

Tory Hanson
2156 74th Avenue Court

Greeley, Colorado 80634
Email: mhuston44@yahoo.com

Greeley, Colorado 80634
Email: thanson@yahoo.com

Greg Taylor
1942 27th Avenue
Greeley, Colorado 80634
Email: gtaylor7050@gmail.com

Mike Slaughter
1674 37th Avenue Place
Greeley, Colorado 80634
Email: mslaugh856@gmail.com

A.J. Johnson
877 E. 20th Street Drive
Greeley, Colorado 80631
Email: aj.johnson.co@gmail.com

IN WITNESS WHEREOF, the City of Greeley and the Licensees have executed this Hunting License Agreement as of the date stated in the preamble.

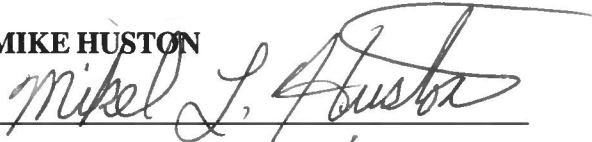
CITY OF GREELEY, COLORADO
a Colorado home rule municipality
acting by and through its Water Enterprise

Water and Sewer Board Approval:

By: _____
Director of Water and Sewer

By: _____
Chairman

MIKE HUSTON



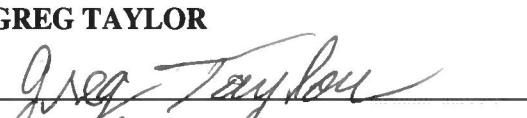
Print: Mike Huston

TORY HANSON



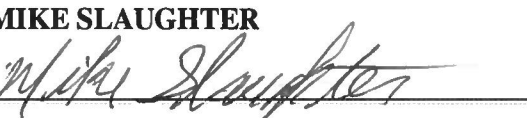
Print: Tory HANSON

GREG TAYLOR



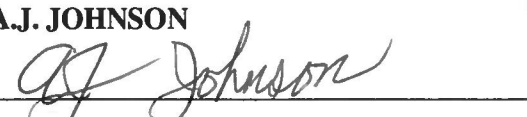
Print: Greg Taylor

MIKE SLAUGHTER



Print: Mike Slaughter

A.J. JOHNSON



Print: AJ Johnson

EXHIBIT A-1
HUNTING LICENSE AGREEMENT

Legal Description of the Property

Parcel A1: A part of the NE ¼ of the NW ¼ of Section 2, Township 5 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, more particularly described as follows:

Beginning at a point on the North line of Section 2, Township 5 North, Range 66 West of the 6th P.M., said point being 677 feet West of the North quarter corner of said Section 2; thence South 236 feet to the center line of the Union Colony No. 3 Ditch; thence Northwesterly along said center line a distance of 541 feet to the intersection of said center line and the North line of said Section 2; thence East along said North line 460 feet to the point of beginning.

Parcel A2: All that part of the NW ¼ of Section 2, Township 5 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, described as follows: beginning at the Northeast corner of the NW ¼ of said Section 2, thence West along the North line thereof 677 feet; thence South 156.5 feet, more or less, to the right of way of the Greeley Irrigation Company Canal (No. 3); thence Southeasterly along the right of way of said Canal to the East line of said NW ¼; thence North along the East line of said Northwest Quarter (NW) to the point of beginning.

Parcels A1 and A2 being more particularly described as follows: A parcel of land being comprised of portions of Parcel No. 1 and Parcel No. 2 as previously described in a deed recorded June 13, 2003 as Reception No. 3072645 of the Records of Weld County and being situate in the Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) of Section Two (2), Township Five North (T.5N.), Range Sixty-six West (R.66W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado, more particularly described as follows:

COMMENCING at the North Quarter Corner of said Section 2, as monumented by a 2.5" Aluminum Pipe with a 3.25" Aluminum Cap stamped LS22098 and 1992, and assuming the North line of the Northwest Quarter of said Section 2 as bearing South 89°26'09" West a distance of 2721.10 feet, with all other bearings contained herein relative thereto: THENCE South 89°26'09" West along the North line of the Northwest Quarter of said Section 2 a distance of 121.34 feet to the Westerly line of that parcel described in a Warranty Deed recorded May 26, 2004 as Reception No. 3183518 of the Records of Weld County and to the POINT OF BEGINNING;

The next Four (4) courses are along the Westerly and Northerly lines of said parcel described in a Warranty Deed recorded May 26, 2004 as Reception No. 3183518 of the Records of Weld County: THENCE South 00°24'57" West a distance of 86.76 feet; THENCE South 59°51'03" West a distance of 174.56 feet; THENCE North 72°35'49" West a distance of 338.32 feet; THENCE South 74°26'36" West a distance of 280.71 feet to the Northerly Right of Way line of the Greeley #3 Ditch as called for in said Warranty Deed recorded May 26, 2004 as Reception No. 3183518 of the Records of Weld County; THENCE South 73°14'56" East along the Northerly Right of Way line of the Greeley #3 Ditch a distance of 211.00 feet; THENCE South 02°36'47" East a distance of 31.80 feet to the center line of the Union Colony No. 3 Ditch;

The following Four (4) courses are along the center line of the Union Colony No. 3 Ditch: THENCE North 73°14'56" West a distance of 221.54 feet; THENCE North 66°27'32" West a distance of 206.66 feet to a Point of Curvature; THENCE along the arc of a curve concave to the Northeast a distance of 82.09 feet, said curve has a Radius of 110.00 feet, a Delta of 42°45'28" and is subtended by a Chord bearing North 45°04'48" West a distance of 80.20 feet to a Point of Tangency; THENCE North 23°42'04" West a distance of 30.71 feet to the North line of the Northwest Quarter of said Section 2; THENCE North 89°26'09" East along the North line of the Northwest Quarter of said Section 2 a distance of 1012.12 feet to the POINT OF BEGINNING.

Parcel B: That portion of the following property lying north and east of the Greeley No. 3 Canal – the South Half of the Southwest Quarter (S1/2SW1/4) of Section Thirty-Five (35), Township Six North (T.6N.), Range Sixty-six West (R.66W.) of the Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado.

Excepting Therefrom that parcel of land conveyed to The City of Greeley in a Warranty Deed recorded May 26, 2004 as Reception No. 3183518 and also Excepting Therefrom that parcel of land conveyed to William A. Putnam and Mary A Putnam in a Quit Claim Deed recorded March 14, 1985 as Reception No. 2001839, said parcel of land conveyed in the Quit Claim Deed subsequently becoming the most westerly portion of the Stoneybrook Subdivision Filing No. 1.

EXHIBIT A-2
HUNTING LICENSE AGREEMENT

Map of the Property



EXHIBIT B
HUNTING LICENSE AGREEMENT



RELEASE AND WAIVER OF LIABILITY

NOTICE. This is a legally binding agreement. By signing this release and waiver of liability, you are giving up all rights to recover compensation or any other remedy for damages and injuries of any kind, including death, to yourself or your property that may arise out of your activities pursuant to or associated with the Hunting License Agreement granted by the City of Greeley and dated _____, 2023 ("Hunting License"), whether the damages or injuries are realized while engaged in such activities or at any time in the future.

ACKNOWLEDGEMENT AND ASSUMPTION OF RISK

I, the undersigned, hereby acknowledge and agree that my participation in activities pursuant to or associated with the Hunting License has inherent and dangerous risks, including, without limitation, the following:

1. All manner of damages or injury to person or property that may result from traveling to and from the City-owned property described in the Hunting License.
2. All manner of damages or injury to person or property that may result from engaging in the activities contemplated by the Hunting License, including, without limitation, hunting waterfowl or other wildlife, discharging firearms, being in the vicinity of firearms that may be discharged, and navigating potentially rugged and uneven terrain.

I, the undersigned, further acknowledge and agree that the above list is not inclusive of all possible risks associated with my participation in activities pursuant to or associated with the Hunting License and that the above list in no way limits the scope of this release. I certify that I have full knowledge of the nature and extent of the risks inherent to my participation in activities pursuant to or associated with the Hunting License and that I am voluntarily assuming all such risks. I understand that I will be solely responsible for any damages or injuries, including death, that I incur while participating in activities pursuant to or associated with the Hunting License and that by signing this release, I am relieving the City of Greeley of any and all liability whatsoever for such damages or injuries.

I, the undersigned, further certify that I am in good health and that I have no physical limitations that would preclude my safe participation in activities pursuant to or associated with the Hunting License. I further certify that I am of lawful age (18 years or older) and legally competent to sign this release. I understand that the terms of this release are legally binding and that I am signing this release, after having carefully read it, of my own free will.

RELEASE OF LIABILITY AND INDEMNIFICATION

In consideration of my participation in activities pursuant to or associated with the Hunting License, I, the undersigned, agree on behalf of myself, my heirs, representatives, executors, administrators and assigns, to hereby release the City of Greeley, its employees, officers, agents, contractors, and sponsors from all liability, causes of

action, and claims or demands of any nature whatsoever associated with my participation in activities pursuant to or associated with the Hunting License, however such liability, causes of action, claims or demands may arise, including, without limitation, from claims of negligence by the City of Greeley, its officers, agents, and employees that I, my heirs, representatives, executors, administrators or assigns may assert related to my participation in activities pursuant to or associated with the Hunting License.

In further consideration of my participation in activities pursuant to or associated with the Hunting License, I, the undersigned, agree to indemnify and hold harmless the City of Greeley, its employees, officers, agents, contractors, and sponsors from all liability, causes of action, and claims or demands of any nature whatsoever associated with my participation in activities pursuant to or associated with the Hunting License.

AGREEMENT TO FOLLOW RULES, REGULATIONS, POLICIES, AND APPLICABLE LAW

I, the undersigned, agree to accept full responsibility for my own safety during my participation in activities pursuant to or associated with the Hunting License, and agree to strictly abide by the terms and conditions of the Hunting License, the rules, regulations, and policies of the City of Greeley, and the requirements of any other applicable legal authority during my participation in activities pursuant to or associated with the Hunting License, including, without limitation, the following:

1. Participants shall comply with all applicable local, state, and federal legal authority related to the regulation of hunting, hunting seasons, and the possession and discharge of firearms or other weapons, including without limitation, all educational and licensure requirements related to the foregoing activities.

The City of Greeley reserves the right to revoke the Hunting License and the access granted to the City-owned property described therein for any reason or no reason, including, without limitation, not abiding by the terms and conditions of the Hunting License, not abiding by any rule, regulation, or policy of the City of Greeley, not abiding by any other applicable legal authority, or for any conduct whatsoever that is deemed by City staff or representatives to be inappropriate, unsafe, or dangerous to the citizens of the City of Greeley.

PARTICIPANT SIGNATURE

Participant Signature

Date: _____

Name: _____

IF PARTICIPANT IS UNDER 18 YEARS OF AGE:

I, as a parent or guardian of the minor participant identified above, who is under 18 years of age, hereby agree individually and collectively on behalf of the participant, that this release is binding upon on myself and upon the minor participant identified above.

Parent or Guardian Signature
if Participant is under 18 years of age

Date: _____

Name: _____



Water & Sewer Agenda Summary

September 20, 2023

Key Staff Contact: Erik Dial, Deputy Director of Utility Finance

Title:

Water Development Code Policy

Summary:

Staff will discuss with the Water and Sewer Board proposed changes to Title 20 of the Municipal Code. Most of the changes proposed are aligning code with current practices and procedures, but staff is proposing a limited number of changes to fees charged that deserve Board deliberation. Staff will discuss the proposed changes to the water development code and seek Board feedback.

Recommended Action:

Informational only

Recommended Motion:

N/A

Attachments:

1. 2023 Municipal Code Update



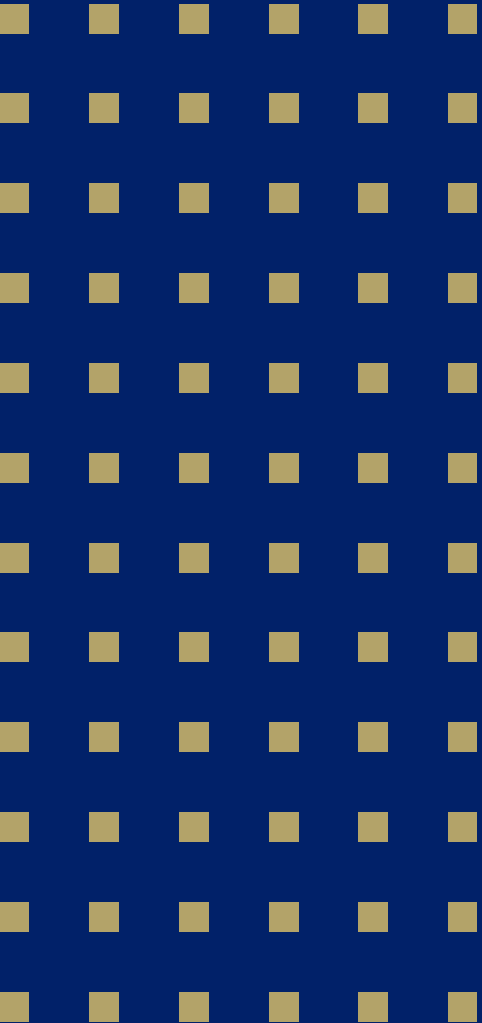
Municipal Code Title 20 Update Policy Discussion

**Water & Sewer Board
September 20, 2023**

Agenda



- Procedural Changes
- Construction Requirements
- Fees & Dedication Requirements

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Procedural Changes



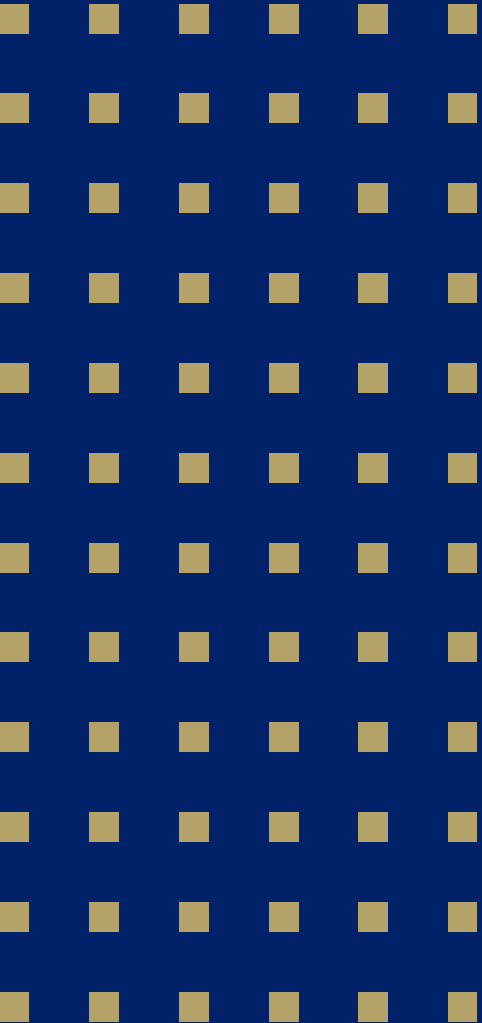
Aligning Practice & Policy

- Review and signature responsibilities
- Raw Water Surcharge administration
 - Canceling surcharge if additional raw water is purchased
- PIF allowance for separating compound services



Water Dedication Credits

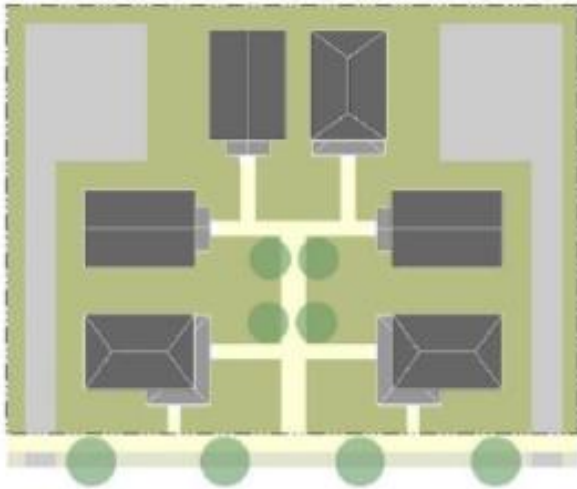
- Require determination of existing credit whenever a commercial or industrial user expands their use
- Base credits on tap size only for those commercial and industrial taps purchased 1989-2019
 - From 1963 to 1989, all water use types required 3 acre-feet per acre
 - After 2019, water dedication based on types of use
- Codify that all other pre-1963 taps shall receive a credit of 3 acre-feet per acre
- Outliers are large industrial taps (2" diameter or larger) installed prior to 1963 that don't have specific water dedication
 - Staff proposes providing credit based on previous 5 years active historic use

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Construction Requirements

Protection & Equity

Tap & Service Configurations



- Updated development code encourages mixture of housing types
 - Allow for compound services on single lots
 - Growth in interest for cottage style housing
 - Allow ancillary structures to be served from the primary structure, both commercial and residential



Septic Systems & Public Sewer

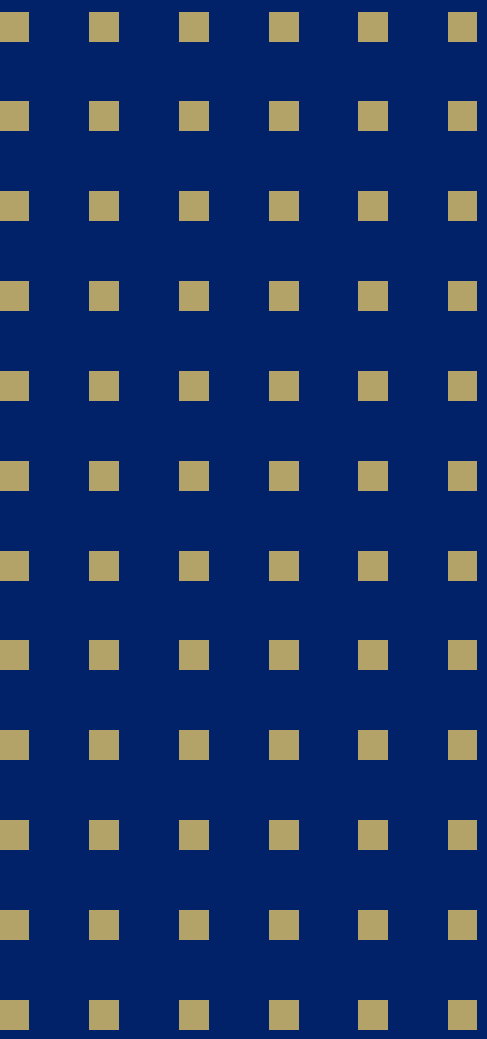


- Current code requirements conflict with practice
 - Code requires connection to public sewer once main is within 400 ft. regardless of septic system's condition
- New requirement will give City more flexibility of when to require connection
- 400 ft. basis of requirement remains the same

Fire Hydrants & Sprinklers



- Updating code to account for existing private fire hydrants
- Creating requirements for making private hydrants public with any redevelopment
- Bringing sprinkler line requirements in line with peers
 - We currently require detector assemblies on large firelines
 - This is not standard practice
 - Detector assemblies are not read

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Dedication Requirements & Fees

Single Family Residential

Minimum Water Dedication



- Currently possible for small single-family lots to dedicate less water than a multifamily unit
- Propose minimum water dedication for a single-family tap set to 50,000 gallons
- Any lot with a private non-potable system must dedicate at least this minimum amount



Large Lot Dedication

- Lots of 1 acre or larger
- Current standard requires a service commitment agreement
 - Allows for dedication based on “developed” area
 - Can lead to dedication requirement significantly less than much smaller lots
- Proposed Policy
 - Return to 3 acre-foot requirement for most large lots
 - Reduce only if system has a private non-potable system and then require at least 50,000 gallons of potable dedication
 - Remove requirement for service commitment agreement



Water Plant Investment Fees

- Allow Staff and Board to align single family residential water fees with impact to system
- Changes in fee would account for lot size and the use of non-potable water (either lot to lot or in the common areas)
- Smaller lots would see a reduction in the PIF
- Changes only apply to single family residential with individual taps
- Plant investment fee schedule to be included in annual rate resolution

Plant
Investment
Fees

Residential Lot Type	Lot Size (s.f.)	Potable Irrigation	Common Space Non-Potable	House to House Non-Potable
Row House	>1000 s.f.	50%	50%	50%
Small Format	1,500-3000 s.f.	50%	50%	50%
Small Lot	3,000-4,500 s.f.	60%	60%	50%
Medium Lot	4,500-6,000 s.f.	70%	70%	50%
Standard Lot	6,000-13,000	100%	75%	50%
Estate Lot	>13,000	100%	100%	50%

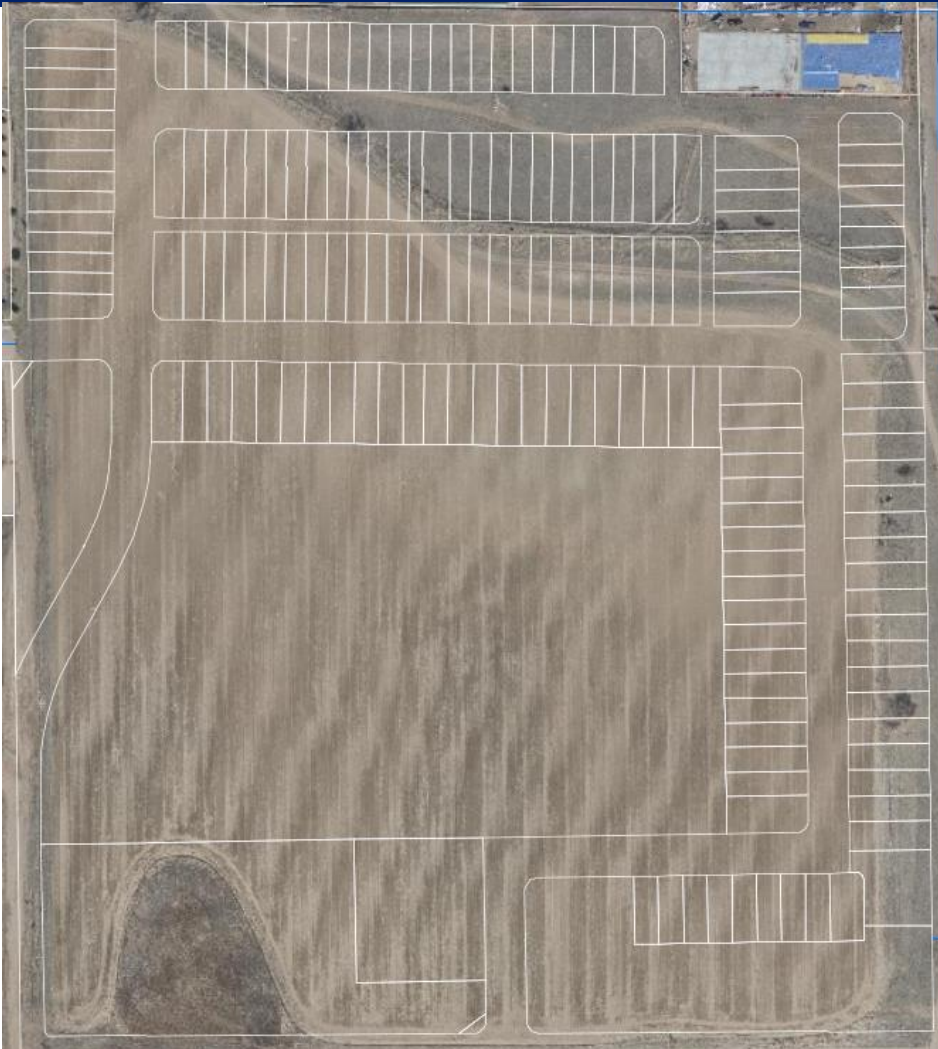
Row House Plant Investment Fees



- Most row houses use master meters rather than individual services
- Proposed Policy
 - Require individual services for individually platted lots
 - Impact to builders will depend on number of units per building
 - 6-Plexes cheaper for water
 - 7-Plexes slightly more expensive
- Sewer fees will increase



Small Lot Water PIFs



- These lots would only see a decrease in plant investment fees per dwelling unit
- Ongoing single-family development of 184 units split between duplexes and detached single family units
 - Duplex units 3,600 SF - \$7,260
 - Single family units 4,560 SF - \$8,470
 - Total water PIF cost drops from \$2,226,400 to \$1,360,040



As shown, these code changes are intended to:

- Bring policy and practice into agreement
- Protect City assets while providing equitable access
- Support diverse housing options by right-sizing fees and construction requirements

Summary

Thank you





Water & Sewer Agenda Summary

September 20, 2023

Key Staff Contact: Adam Prior, Chief Engineer

Title:

60" Bellvue Transmission Pipeline and FEMA BRIC Grant Update

Summary:

This presentation will be an update to the Board on the progress and status of the 60" Bellvue Transmission Pipeline and the FEMA BRIC grant.

Recommended Action:

Informational only

Recommended Motion:

N/A

Attachments:

1. Bellvue 60-BRIC Update



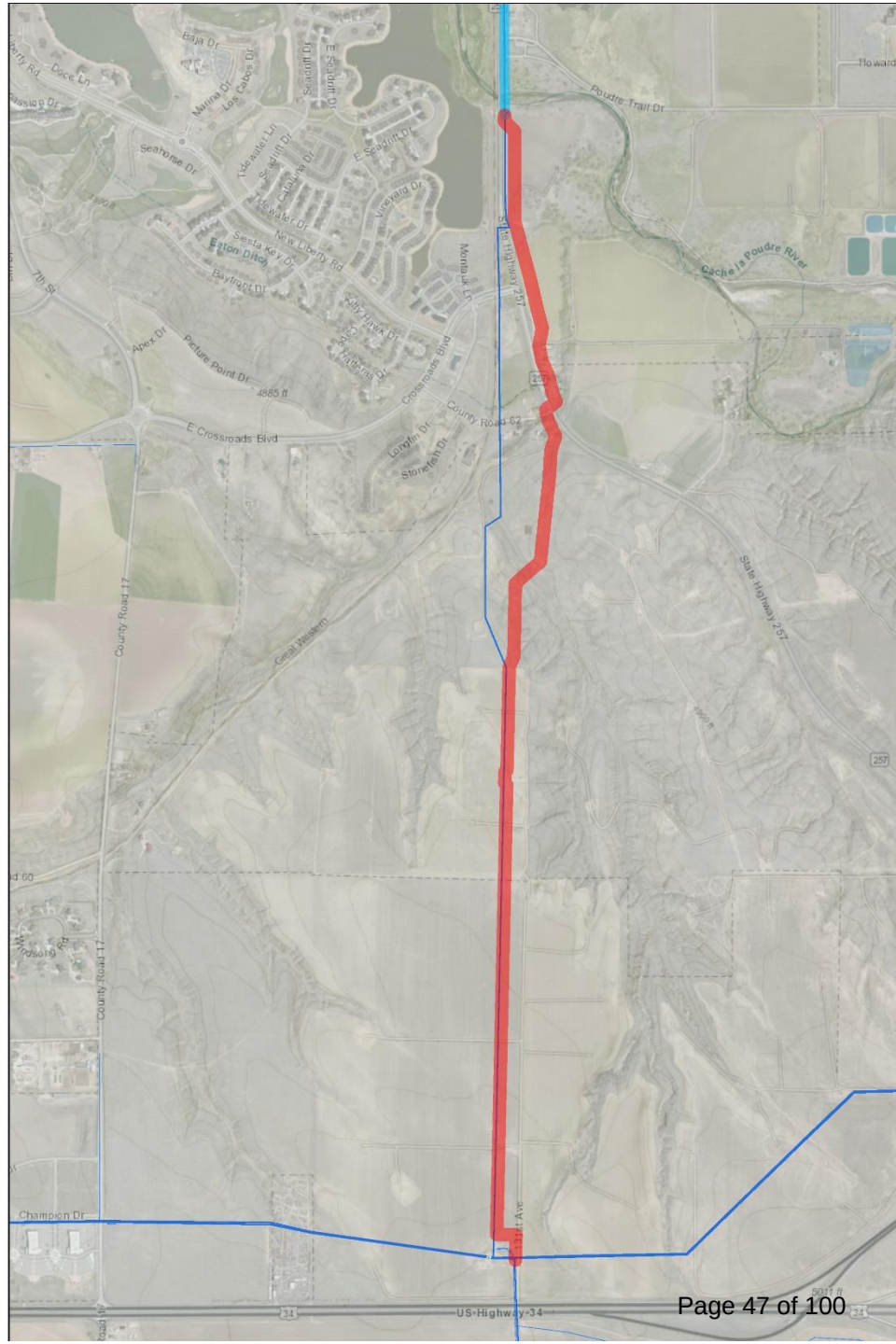
Gold Hill Segment

Bellvue 60" Transmission Pipeline
& FEMA BRIC Grant Update

September 2023

Gold Hill Segment

- 2.8 miles of 60" pipeline
- Connection to 60" south of Poudre River and to Boyd transmission lines (HWY 34)
- \$22 million budgeted for Gold Hill Segment in 2024-2026
- All easements are secured with their respective owners
- CDOT for HWY 257 open cut casing installation





HWY 257 Coordination with CDOT

- Coordinated with CDOT for HWY 257 open cut casing installation
 - Bore was planned for \$1 million
 - Open cut casing cost of \$300K
 - Installation of carrier pipe planned in 2024
- Installed 80' of Casing for pipeline
 - Completed from Sept. 5th to Sept. 9th

Building Resilient Infrastructure and Communities (BRIC)



RESILIENCY: THE PROJECT WILL IMPROVE GREELEY'S ABILITY TO DELIVER WATER DURING IMPACTS AND OUTAGES AT THE WATER TREATMENT FACILITIES



REDUNDANCY: THE PROJECT WILL ALLOW GREELEY TO UTILIZE EXISTING REDUNDANT SUPPLY, TREATMENT, TRANSMISSION, AND DISTRIBUTION INFRASTRUCTURE AND CAPACITY.



REGIONAL: THE PROJECT SERVES GREELEY, EVANS, MILLIKEN, AND PORTIONS OF WINDSOR AS WELL AS PROVIDING EMERGENCY WATER DELIVERY CONNECTIONS WITH OTHER WATER SYSTEMS.



RELIABILITY: GRAVITY FLOW REDUCES PUMPING WHICH WILL REDUCE COSTS AND REDUCE THE LIKELIHOOD OF FAILURE



Planned Budget

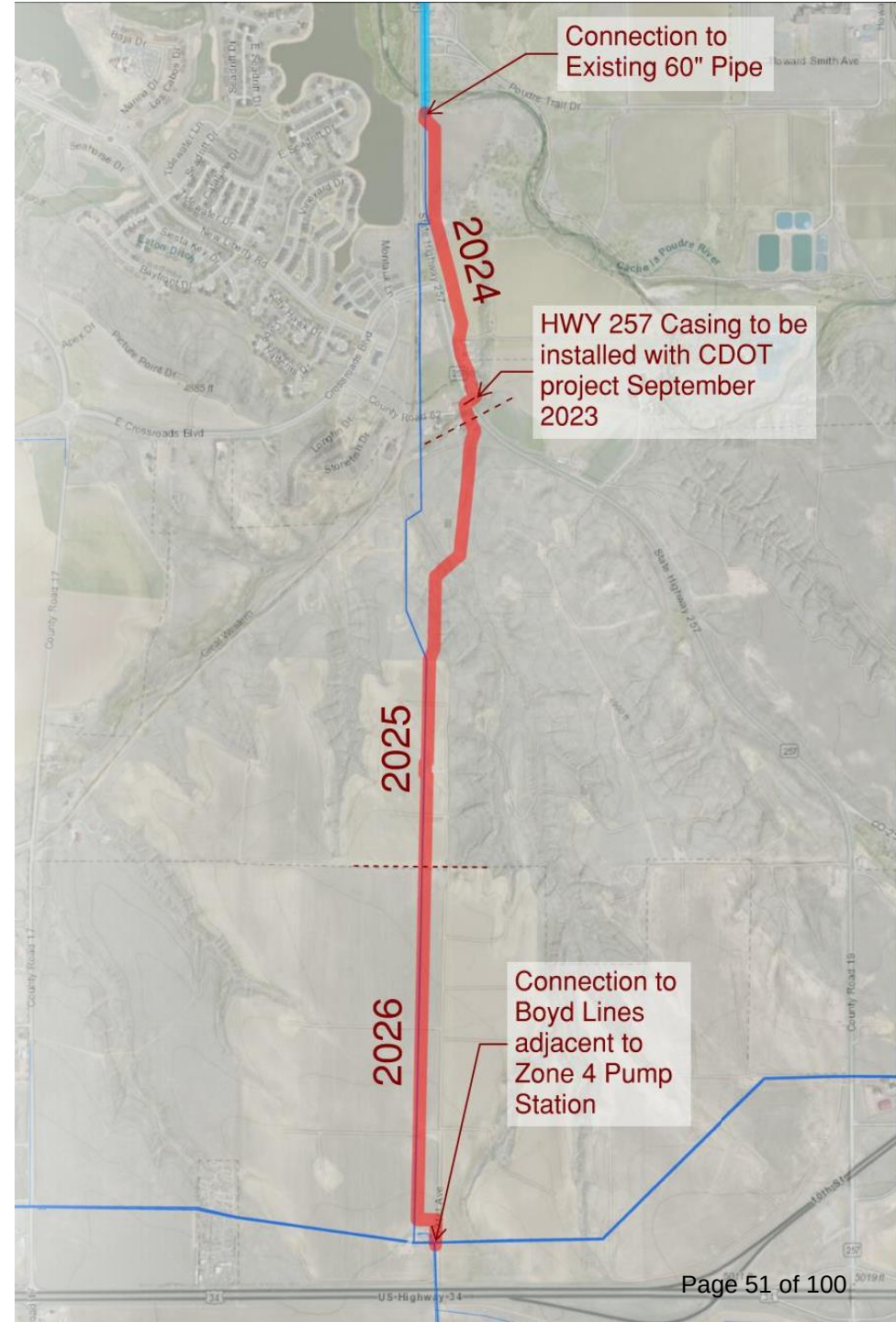
- 2023 - \$ 160,000
- 2024 - \$ 5,488,000
- 2025 - \$ 8,232,000
- 2026 - \$ 8,305,000

Updated Budget

- 2023 - \$ 160,000
- 2024 - \$ 22,025,000
- BRIC Grant:
— \$13,820,000

Updated Schedule

- Finalize Construction Drawings (90%): **June – November 2023**
- Approval from Windsor: **August-December 2023**
- Install Casing across HWY 257 in Conjunction with CDOT Project: **planned September 2023,**
- Bid project: **November - December 2023**
- **Construction: 2024-2025**



Questions?





Water & Sewer Agenda Summary

September 20, 2023

Key Staff Contact: Sam Harshbarger, Water Resource Administrator III

Title:

Water Court Update

Summary:

The City of Greeley Water and Sewer Department is active in numerous Water Court matters to develop additional water supply and to protect existing water rights. In the second trimester, Greeley filed 2 statements of opposition and stipulated out of 4 cases. So far in 2023, water court legal costs equaled \$296,718 and engineering costs equaled \$113,702 for a total annual cost of \$410,420.

Recommended Action:

Informational only

Recommended Motion:

N/A

Attachments:

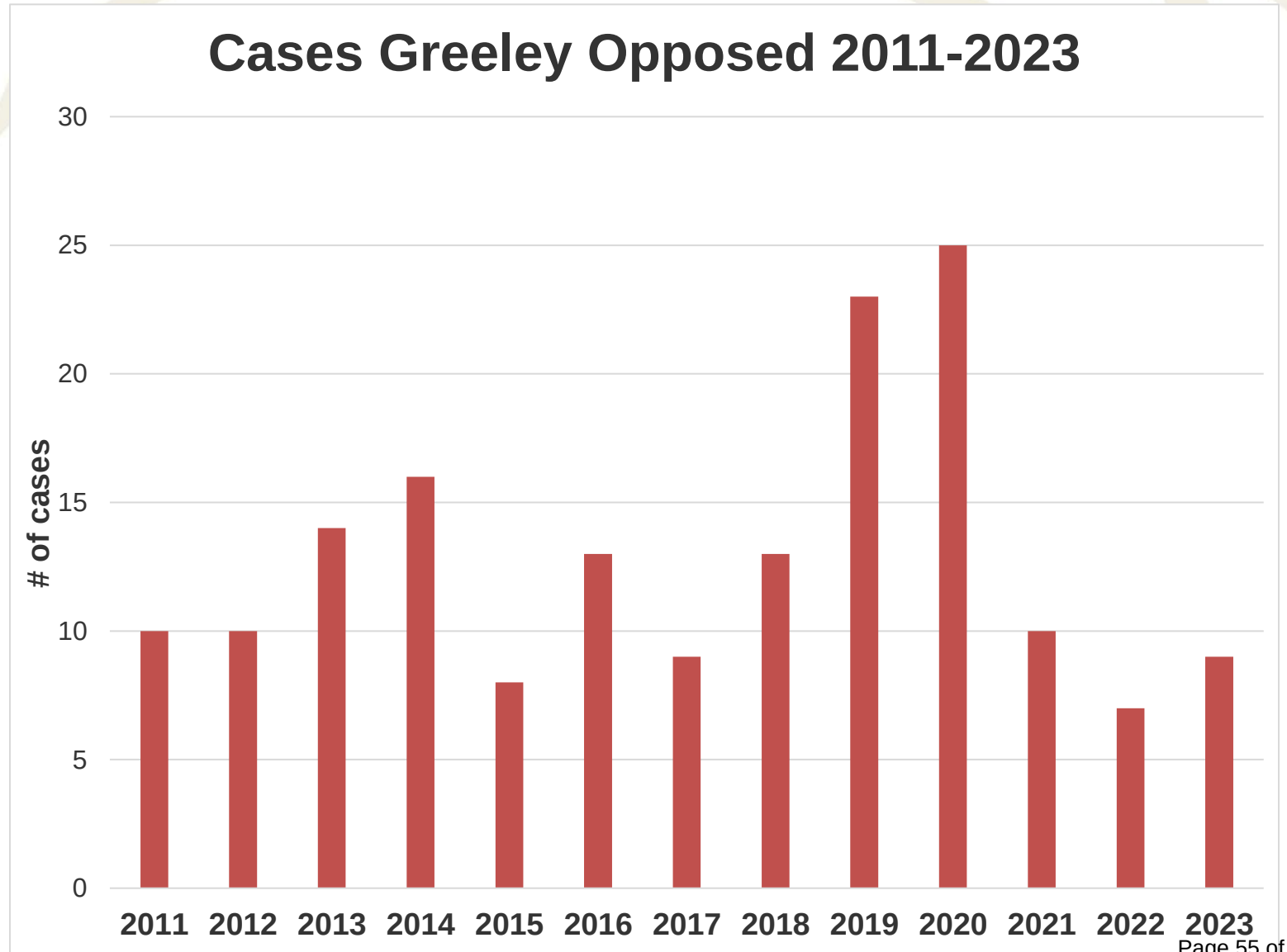
1. Water Court Update
2. Second Trimester Water Court Update Memo

2nd Trimester Water Court Update

Sam Harshbarger, Water Resources Administrator II
September 20th, 2023

Statements of Opposition

- T1 2023: 7 statements of opposition filed and 4 stipulations reached
- T2 2023: 2 statements of opposition filed and 4 stipulations reached
- Number of cases Greeley is *currently* an opposer: **33**
- Total number of active cases in 2023: **36**



Greeley as Applicant

Poudre Instream Flows Aug. Plan 21CW3056



- Preserve and improve Poudre River instream flows
- Co-Applicants with CWCB, Fort Collins, and Thornton
- Greeley using GIC rights
- 20 statements of opposition filed
- Case has been re-referred to Judge
- Parties exploring settlement

Greeley as Applicant

Greeley Change of WSSC (22CW3042)

- Changing 23.917 shares
- Municipal, augmentation, and other uses
- Includes plan for augmentation for return flows
- Conditional direct flow water right for return flows
- 24 statements of opposition were filed; 2 stipulations reached
- Greeley will respond to 2nd round of comments by September 26th.



Greeley as Applicant

Greeley Lower Poudre Diligence (22CW3220)



- Filed application on December 31st, 2022
- Greeley claiming additional amount of junior storage right as absolute for a total of 1,458.6AF
- Greeley also seeking to increase rate of exchange from 6.14 cfs to 9.04 cfs from WWTP to Boyd and Freeman Headgate
- 4 statements of opposition were filed
- Greeley will provide a second draft of the proposed decree by October 13th.

Legal & Engineering Expenses

2023 Costs

Legal	\$ 296,718
Engineering	\$ 113,702
Total	\$ 410,420

This is 82% of the \$498,272 spent in 2022

Notable Case

Lazy D Grazing Association (20CW3113)

- Applicant sought non-tributary groundwater right in Upper Laramie Aquifer located near Terry Ranch
- Case went to trial April 10th
- Court released decision August 18th finding that the water is non-tributary





Questions?





Water & Sewer Department MEMORANDUM

TO: Greeley Water & Sewer Board
FROM: Sam Harshbarger, Water Resources Administrator II
DATE: September , 2023
RE: 2023 2nd Trimester Water Court Cases Update

This memorandum is a review of the Water and Sewer Department's legal activities from May 2023 through July 2023. The review includes an update on Greeley's current Water Court cases and a summary of the Water Resources Division's legal expenses.

STATEMENTS OF OPPOSITION

Since the last update in May, Greeley has filed two statements of opposition and stipulated in four cases. Therefore, the current number of pending Water Court cases in which Greeley is an opposer is 33.

Statements of Opposition filed:

Case	Applicant
23CW3078	Handy Ditch-Hertha Reservoir
23CW3079	Mundt

Stipulations filed:

Case	Applicant
20CW3024	Weld County/Central Conservancy District (Geisert Reservoir)
20CW3142	ACWWA (Whitney Ditch)
22CW3055	Fort Collins (Halligan Diligence)
21CW3225	St. Michaels Reservoir

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.

GREELEY AS APPLICANT

A summary of pending Water Court cases in which Greeley is the applicant is as follows:

21CW3056 (City of Greeley, et al., Poudre River Instream Flows Augmentation Plan)

On April 29, 2021, the City of Greeley filed a joint application with the Colorado Water Conservation Board, Colorado Water Trust, City of Fort Collins, City of Thornton, Northern Water, and the Cache la Poudre Water Users Association for approval of a plan of augmentation for instream flows in the Cache la Poudre River. The purpose of the augmentation plan is to preserve and improve the natural environment to a reasonable degree at various locations in the Poudre River from the Cache la Poudre at Canyon Mouth near Fort Collins gage to the confluence of the South Platte River. Greeley has proposed to include certain of its changed Greeley Irrigation Company shares in the plan. Twenty statements of opposition have been filed. This case has been re-referred to the water judge and is set for trial in October 2025. Further comments are due from opposers in October and responses to those comments are due from the applicants in December.

22CW3042 (City of Greeley Change of WSSC)

On March 31, 2022, the City of Greeley filed its application for the change of 23.917 shares in the Water Supply and Storage Company (“WSSC”). Greeley is changing the shares from irrigation to municipal, augmentation, and other uses. Greeley also seeks a plan for augmentation and water exchange project for the replacement of return flows from the native portion of the Subject Shares and an appropriation of such return flows. Greeley also seeks a conditional direct flow water right for replacement of return flows. Twenty-four statements of opposition were filed and Greeley has stipulated with two opposers. Greeley’s next deadline is to reply to the second round of comments from opposers by September 26th.

22CW3220 (City of Greeley Lower Poudre Diligence)

On December 31, 2022, the City of Greeley filed its application for diligence and to make an additional portion absolute for partially conditional water rights originally decreed in Case No. 99CW234. This application concerns the partially conditional water storage rights for Flatirons Reservoirs 1-5 (a.k.a. Poudre Ponds) and the partially conditional rights of substitution and exchange. Greeley is seeking to increase the absolute storage amount in Poudre Ponds from 1,304 acre-feet to 1,458.6 acre-feet. Greeley is also seeking to increase the absolute rate of exchange from 6.14 c.f.s. to 9.04 c.f.s. from the Wastewater Treatment Plant to the Boyd and Freeman Headgate. Four statements of opposition were filed. Greeley will circulate a revised proposed decree and respond to comments from opposers by October 13th.

LEGAL & ENGINEERING EXPENSES:

The Water Resource Division's outside legal and engineering expenses from January through July 2023 totaled \$410,420, which is 82.4% of the total \$498,272 spent in 2022.

2023 Water Resources Legal and Engineering Costs

<u>1st trimester</u>	
Legal	\$133,066
Engineering	\$46,203
<i>Total</i>	\$179,269
 <u>2nd trimester</u>	
Legal	\$163,652
Engineering	\$67,499
<i>Total</i>	\$231,151
 <u>3rd trimester</u>	
Legal	
Engineering	
<i>Total</i>	
 <u>Annual Totals</u>	
Legal	\$296,718
Engineering	\$113,702
Total	\$410,420



Water & Sewer Agenda Summary

September 20, 2023

Key Staff Contact: Leah Hubbard, Water Resource Operations Manager

Title:

Legal Report

Summary:

This report has been provided by James Noble, outside counsel for the Greeley Water & Sewer Board.

Based on our review of the July, 2023 Water Division 1 Resume, staff and water counsel recommend that the Water and Sewer Board file statements of opposition to the following water court applications that would be due at the end of September, 2023:

1. Case No. 23CW3082: Applicant, "Sky Corral," is seeking a finding of reasonable diligence and to make a portion of a conditional water right absolute for a small capacity well that is covered by an augmentation plan. The application claims to make 5 gpm absolute out of a total of 30 gpm. Staff recommends participating in this case because the applicant has a lease with Greeley to provide the replacement supply for the augmentation plan. Greeley will participate in this case to ensure that the claimed operations are consistent with the terms of the lease.
2. Case No. 23CW3084: Applicant, the City of Evans, is seeking to change the use of six shares in the Greeley & Loveland Irrigation Company ("GLIC") for use in Evans' potable and non-potable municipal water systems. Applicant intends to follow the systemwide analyses for GLIC shares as set out in previous GLIC decrees, including 96CW958, 03CW314, and 08CW175, as well as the settlement agreement in Case No. 18CW3042, to which Greeley was a party. Staff recommends participating in this case to protect Greeley's extensive interests in the GLIC system and to ensure that the settlement agreement is applied appropriately.

Recommended Action:

Staff and water counsel recommend authorizing filing statements of opposition in Division 1 Case Numbers 23CW3082 and 23CW3084.

Recommended Motion:

"I move that the Board authorize filing statements of opposition in Case Nos. 23CW3082 and 23CW3084, and for staff and legal counsel to seek resolution of issues raised by these cases consistent with Water and Sewer Board Resolution No. 3-15."

Attachments:

None



Water & Sewer Agenda Summary

September 20, 2023

Key Staff Contact: Sean Chambers, Water & Sewer Director

Title:

Director's Report

Summary:

The Director will provide the Water & Sewer Board and staff with a brief update on the following items of water utilities policy interest;

1. Congratulations to and appreciation of those supporting and participating in NoCO Water Literate Leaders program <https://watercenter.colostate.edu/wll/>
2. Greeley Wastewater Treatment Nitrification Phase 2 Ribbon Cutting
October 6, 2023 | 10 a.m. at 300 E. 8th Street, Greeley, CO 80631
3. City of Greeley and Colorado Water Industry Education and Advocacy Events Calendar
 - a. South Platte Basin Roundtable – Sept. 12th at SW Weld Co. Building
 - i. <https://www.southplattebasin.com/>
 - b. Colorado Water Conservation Board (CWCB) fall meeting – 9/20 – 9/21/23
 - i. In person at The Steam Plant Event Center with virtual meeting broadcast
 - ii. <https://cwcb.colorado.gov/board-meetings>
 - c. Interbasin Compact Committee (under CWCB) – Oct. 19th
 - d. Upper Colorado River Water Forum - Oct. 30-31st
 - i. Colorado Mesa University in Grand Junction, CO.
 - ii. <https://www.coloradomesa.edu/water-center/events.html>
 - e. South Platte Basin Water Forum – November 30th
 - i. Aims Community College Welcome Center
 - ii. <https://www.southplatteforum.org/>
 - f. CWCB's C-9 Statewide Water Basins Roundtable Summit – November 14 - 15th
 - g. Colorado River Water User Association (CRWUA) Annual Meeting – Dec. 13 – 15th
 - i. <https://www.crwua.org/welcome.html>
 - h. Colorado Water Congress Annual Meeting & Legislative Breakfast – Jan. 31- Feb 2nd
 - i. Aurora-Denver Hyatt Conference Center
 - ii. <https://www.cowatercongress.org/advocacy/>
 - i. Virtual re-broadcast of CWCB Drought Summit (5/31-6/1) is available for viewing at:
 - i. <https://engagecwcb.org/drought-summit>
 - j. Chimney Hollow - Colorado Connectivity Channel Hits One Year Mark
 - i. <https://www.youtube.com/watch?v=R1aO2meLZg0>

Recommended Action:

Informational only

Recommended Motion:

N/A

Attachments:

1. Nitrification Phase 2-invitation
2. CoGreeley.WOTUS.gap.program.comments.2023.08.31
3. CO NOI Comment Letter 8-15-2023 (003)
4. CWCB C-9 Save the Date
5. A Colorado City Has Been Battling for D._
6. Board Meeting Charts_2023



HELP US CELEBRATE OUR **\$35 MILLION** **MILESTONE!**

The Nitrification Project expands our plant's capacity to treat organic material and reduces the amount of nutrients released into the river!

Nitrification Phase 2 Ribbon Cutting

October 6, 2023 | 10 a.m.

City of Greeley Wastewater Treatment & Reclamation Facility
300 E. 8th Street, Greeley, CO 80631

RSVP: janaya.lieberknecht@greeleygov.com





August 31, 2023

State of Colorado
200 E. Colfax Ave., Rm. 136
Denver, CO 80203

Submitted as an attachment via online comment form:

https://tables.area120.google.com/u/0/form/8FrBXHbzVTK4IE0DVbSOY8/t/bFuz058pWG33uI2McIPk9sbb0CHwYjmJze_G4D55JOY189QftWc0R5r2MlxreTL_cp

RE: City of Greeley Comments – Re: July 26th WOTUS Stakeholder Meeting

Dear Mr. Moore,

The City of Greeley (“Greeley”) is hereby providing its comments on the proposed establishment of a State dredge and fill permitting program (“State Program”). Greeley is submitting these initial comments to assist with the direction of, and objective for, future stakeholder discussions. As this letter contains only its initial comments, Greeley intends to provide more detailed comments in the future as the State Program begins to take shape.

There is broad recognition that the ruling in *Sackett v U.S. Environmental Protection Agency* (“Sackett”) narrowed the definition of Water of the United States. As a result, certain Waters of the State (“State Waters”) were removed from federal jurisdiction and are no longer protected by the Clean Water Act. By reducing the jurisdictional scope, the Supreme Court effectively shifted part of the burden to restore and maintain the chemical, physical, and biological integrity of the nation's waters to the states. While this has created a gap of State Waters that are no longer protected, it has also provided an opportunity to create a program that is tailored to the needs of Colorado. To take advantage of this opportunity and build a program that benefits all Coloradoans, the formation of a State Program must be establishment through a robust and authentic stakeholder engagement process and include a critical discussion about the goal of a State Program and the resources available for establishing and operating the same. To that end, Greeley strongly recommends the following:

- 1. Stakeholder Engagement.** The State must establish a robust stakeholder engagement process that is centered on honest, authentic communication and that supports a robust, open dialog of the issues. This would include providing adequate notice and opportunity to engage (i.e., both in-person and remote), periodic progress updates, and engagement and collaboration with federal dredge and fill permitting experts and wetland and riparian specialist. While the State Program may be envisioned as narrow in terms of its objective or goal, it will have a significant impact on other but equally important public policy objectives. Thus, the stakeholder process must be structured in a way that reflects an adaptive approach to building a State Program as opposed to an obligatory step in the process of implementing a preconceived program.

2. **Appropriate State Agency.** The stakeholder engagement process should include a discussion on identifying the state agency best suited for administering a State Program with a clearly defined scope and processes. To identify the correct agency, however, the State, through the stakeholder engagement process, must first identify the core purpose and goal of the program (e.g., to develop, preserve and enhance “gap” waters and water resources). Once the core purpose of the program has been established, then any department whose mission is compatible and consistent with that purpose should be considered as the lead agency. Once identified, each department should undertake a full and honest analysis of its capacity and resources available and needed for the program. This analysis should include technical capacity and requirements, staffing, including available resource specialists and subject matter experts, and any other resources necessary to run an efficient and effective program. Once compiled, the State should use the analysis to determine which state agency is best suited for administering a State Program.
3. **Adequate Resources.** Depending on the scope and defined purpose of the State Program, its ability to function (or lack thereof) will have a significant impact on the future development of key infrastructure and policy initiatives that are of critical importance to the State, Greeley, and other local governments. While the State Program may be narrow in terms of purpose, the program, depending on how it is structured and funded, could have a significant impact on economic activity and the rate at which local governments can implement important policy objectives. Programs that could be affected include sewer and stormwater grey infrastructure, green infrastructure, watershed restoration and mitigation, broadband infrastructure, multi-modal transit, and housing affordability. In conjunction with defining the core purpose and analyzing the appropriate state agency to administer the program, the scope of the State Program must be scaled to available resources and anticipated funding. Establishing a broad, all-inclusive State Program that is underfunded will only exacerbate the existing challenges local governments have in implementing policies and objectives that are of equal importance to protecting the State's aquatic resources. Thus, the scope of the State Program must be reflective of its anticipated funding.
4. **Certainty in the Permitting Process.** In addition to adequate funding, the regulatory framework of the State Program must provide clear directives and produce reliable permitting timelines. Adopting a morass of regulatory standards only leads to unnecessary action and expense and unpredictable permitting timelines. Like an unfunded program, confusing or ambiguous regulations can have a significant negative impact on economic activity and the rate at which local governments can implement important policy objectives. The following are examples of guiding principles when drafting and evaluating regulatory standards:
 - a. Standards that can be understood and implemented without the assistance of a consulting permitting specialist or legal counsel.
 - b. Incorporate clear and precise program definitions with appropriate use of industry specific terminology.

- c. Do the standards establish clear expectations based on the activity being performed, not on the person or entity performing the activity; and
- d. Do the standards include appropriate exemptions based on activities commonly performed in Colorado that balance the public need for the activity against the need to protect the aquatic resource (e.g., discharges into stormwater control features or discharges associated with wildfire and flood mitigation).

Greeley sincerely appreciates the opportunity to provide comments on the formation of a State Program. If you would like to discuss more information, please contact Sean Chambers at Sean.Chambers@greeleygov.com.

Sincerely,

CITY OF GREELEY, COLORADO
OFFICE OF THE CITY MANAGER



Raymond C. Lee III
City Manager

CC: Governor Jared Polis
Alec Garnett, Chief of Staff
Jill Hunsaker Ryan, Executive Director, CDPHE
Dan Gibbs, Executive Director, DNR
Mayor John Gates, City of Greeley
Donn Tripp, Deputy City Manager, City of Greeley
Harold Evans, Chairman, Greeley Water & Sewer Board

August 15, 2023

Commissioner Camille Calimlim Touton
Bureau of Reclamation
1849 C Street NW
Washington, DC 20240-0001

VIA ELECTRONIC MAIL
crbpost2026@usbr.gov

RE: The State of Colorado's Response to the Request for Comments on the Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead, 88 FR 39455 (June 16, 2023)

Dear Commissioner Touton:

The State of Colorado, acting through the Governor's Representative and the Colorado Water Conservation Board (collectively "Colorado"), submit the following comments in response to the Bureau of Reclamation's ("Reclamation") Request for Comments on the *Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* ("NOI"), 88 FR 39455 (June 16, 2023). Colorado appreciates your consideration of our comments and requests that they be incorporated into the preparation of the Post-2026 Operations Environmental Impact Statement ("Post-2026 Operations").

The State of Colorado understands that Reclamation is formally initiating an environmental review process under the National Environmental Policy Act ("NEPA") to prepare an Environmental Impact Statement ("EIS") for the development of Post-2026 Operations. Through the June 16, 2023, Notice, Reclamation is requesting comments on: (1) the scope of specific operational guidelines; (2) strategies; and (3) any other related issues that should be considered in the upcoming EIS.

In addition to joining the Comment Letter submitted by the Basin States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, and the Upper Division States of Colorado, New Mexico, Utah, and Wyoming Letter through the Upper Colorado River Commission ("UCRC"), Colorado submits the following comments:

I. Colorado's Interests

Colorado is on the front lines of climate change. Because no major rivers flow into Colorado, and we are without the benefit of large reservoirs above our places of use to provide a steady, reliable source of supply, Colorado must satisfy all its water demands from runoff within the state. The Colorado River and its tributaries supply over forty percent of Colorado's water needs and provide water to the majority of the State's population.

In Colorado, we have a long history of administering water rights according to the physical and legal availability of water in a particular location at a particular time. Because we rely solely on snowpack and subsequent runoff each spring for our water use, our water use is highly variable each year. Colorado's system of administration allows for adaptation to such changing circumstances, including throughout the last twenty-three years of drought. This means that many water users in Colorado do not receive the full amount of their legal allocation that they can place to beneficial use under existing rights, which significantly impacts Colorado's farms, ranches, cities and towns, the recreation industry, and the environment. Importantly, for the last twenty-three years, Colorado water users have had to cut uses and take shortages nearly every year, including cuts to water rights that are senior to the 1922 Colorado River Compact. In some instances, Colorado water users only received ten percent of what they are legally entitled to receive. In 2021, Colorado and the other Upper Division States used 3.5 maf, which is roughly 1.0 maf less than they used in 2020 and is less than half of the water apportioned to the Upper Basin under the Colorado River Compact.

Despite these challenging circumstances, over the last two years, Colorado and the other Upper Division States contributed 624,000 acre-feet of water from Colorado River Storage Project Act reservoirs to help protect critical elevations in Lake Powell under the 2019 Drought Contingency Plan ("DCP"). In 2022, Colorado, along with the three other Upper Division States also developed a 5 Point Plan that included a voluntary, temporary, and compensated pilot program available to willing water users to conserve water to help mitigate drought conditions in the Upper Basin through 2024. Through that program, the Upper Division States are projected to conserve approximately 40,000 acre-feet in 2023, with Colorado contributing roughly 2,700 acre-feet.

Despite these efforts, storage in Lake Powell and Lake Mead has been depleted over the last twenty years, which has created risks for the entire Colorado River System, including Colorado's substantial interests in the Colorado River. Protection of Colorado's interests into the future requires operation of Lake Powell and Lake Mead based on actual hydrology, and the restoration and protection of storage to maximize operational certainty.

II. Purpose and Need

New guidelines for Post-2026 Operations are needed because the current operating guidelines are not sustainable. Between 2000 and 2022, the Colorado River experienced the worst drought conditions in over one hundred years of recorded history. During this period, storage in Lake Powell and Lake Mead dropped from nearly full to a system storage of less than 32 percent of capacity as of March 20, 2023. Despite a record snowpack in 2023 and a very high spring runoff, the system storage was still only at 44 percent of capacity as of July 18, 2023. The prolonged drought and allowed overuse in the Lower Basin have highlighted the deficiencies in the *Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead* (“2007 Guidelines”). The 2007 Guidelines have proven insufficient to properly manage Lake Powell and Lake Mead during periods of dry hydrology and depleted reservoir conditions.

The need for repeated interventions as the system bordered on collapse demonstrates the ineffectiveness of the 2007 Guidelines. This includes the System Conservation Pilot Programs that started in 2014, the DCP, Minute 323, and the 2022 Supplemental EIS to the 2007 Guidelines that is currently underway.

Over the past fifteen years, storage in Lake Powell and Lake Mead has been depleted largely due to reservoir releases that do not respond to actual hydrologic conditions. Releases from storage under the 2007 Guidelines ignore critical components of the mass balance of water across the Basin including but not limited to accounting for evaporative and conveyance losses in the Lower Basin. Moreover, as has been clear since 2020, shortage conditions imposed by the 2007 Guidelines and the DCPs do not begin early enough and do not conserve adequate volumes of water to sustain critical infrastructure elevations at Lake Powell and Lake Mead during multi-year drought periods.

Guidelines that meet the criteria below will provide a greater degree of operational certainty to Colorado River water users and managers of waters at and below Lake Powell into the future. Going forward, the guidelines for Post-2026 Operations must use actual hydrologic conditions for decision-making, rather than data from projections several months or years into the future, and allow for the restoration and protection of storage in both reservoirs. This enables water users and managers in the Upper and the Lower Basin to know the amount of available water supply in a given year, and to adapt in such a way that in dry years, uses are reduced to reflect available water supplies and storage is preserved to the greatest extent possible in the event of multi-year drought.

This will require guidelines for Post-2026 Operations that:

1. Acknowledge that climate change is real, and include operations for a drier, more variable future that adapt and respond to actual hydrology.

2. Include mechanisms to rebuild depleted storage in both reservoirs and to protect storage into the future by considering actual hydrology and using targeted, short-term forecasting.
3. Recognize that Lower Basin overuse is unsustainable and puts the entire system at risk. New guidelines should better assure operational certainty into the future by reducing the imbalance between supply and uses. This will require permanent Lower Basin reductions of 1.2 million acre-feet to 1.5 million acre-feet each year. An important step to help meet those reductions may be to account for evaporation and system losses in the Lower Basin.
4. Do not interfere with the right of any state to administer and distribute all the waters within its boundaries.
5. Avoid uncertain outcomes from litigation by recognizing the Law of the River, anchored by the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact (“Compacts”) together with the 1944 Treaty with Mexico, as the foundation for any new guidelines and strategies for Post-2026 Operations. These foundational components provide legal certainty regarding management of the Colorado River System and its infrastructure and allow for collaboration and consensus.
6. Ensure that operations do not favor one basin over the other. Post-2026 operating guidelines must fairly balance the burden of climate change across the entire Colorado River Basin. The Upper and Lower Basins have equal apportionments of the Colorado River in perpetuity. Water users in the Lower Basin cannot be given priority over water users in Colorado and the other Upper Division States.
7. Acknowledge that Colorado River Basin Tribes have water rights that they are entitled to use. The development of sustainable and effective guidelines and
8. Strategies for Post-2026 Operations at Lake Powell and Lake Mead will depend upon participation of the Colorado River Basin Tribes.

III. Scope of NEPA Process

The NOI recognizes that guidelines and strategies for Post-2026 Operations will pertain to operations of Lake Powell and Lake Mead. As such, those guidelines can only focus on hydrologic conditions impacting Lake Powell, storage conditions, and releases at Lake Powell and Lake Mead subject to the existing legal framework. They cannot modify operations at the other Initial Units built under the Colorado River Storage Project Act, including the respective records of decision that govern each of these reservoirs.

Over the last twenty-three years of drought, the Upper Division States experienced imbalances between available supply and demands because the Upper Division States are limited by actual hydrology and experience shortages every year. This includes uncompensated water rights administration that result in reductions in water annually. During the same period, water use in the Lower Basin remained constant and even increased during the worsening drought in recent years.

Any assumption of reductions in use or curtailment in the Upper Basin is beyond the scope of this process. Separate from this process, Colorado will continue to advance initiatives to increase resiliency and the sustainable use of its Colorado River supplies.

Guidelines for Post-2026 Operations must rely upon the best available science, including actual hydrology and storage conditions at Lake Powell and Lake Mead, and the targeted use of short-term forecasting. The guidelines must include accurate, and transparent accounting for all depletions in the Colorado River System that are consistent with the Law of the River, issued annually, and rely upon the most recent studies including, but not limited to, the *One Meter Topobathymetric Digital Elevation Model for Lake Powell, Arizona-Utah, 1947-2018*.

Moreover, to understand and compare alternatives for guidelines for Post-2026 Operations, it is imperative that Reclamation issue the Lower Basin Consumptive Uses and Losses Report 2006-2022 at the earliest opportunity.

There must also be a thorough analysis of the Secretary of the Interior's ("Secretary") authorities to apportion water and impose shortages in the Lower Basin and to consider opportunities to balance water supplies with depletions there to recover storage at Lake Powell and Lake Mead. However, a detailed framework or rulemaking for voluntary water conservation measures in the Lower Basin, species conservation programs, or other related matters must be addressed in separate but parallel proceedings.

Guidelines for Post-2026 Operations must be interim in duration.

IV. No Action Alternative

The NOI recognizes that the 2007 Guidelines and the DCPs, and related reservoir and water management agreements and decisional documents are scheduled to expire December 31, 2025. Amending the 2007 Guidelines, the DCPs, and related agreements to extend their current expiration dates requires federal action. Therefore, the No Action alternative cannot include the extension of the 2007 Guidelines or the DCPs.

The No Action Alternative must acknowledge that pursuant to Section 8.C of the 2007 Guidelines, absent the issuance of a Record of Decision for Post-2026 Operations at Lake Powell and Lake Mead, at the conclusion of the effective period of the 2007

Guidelines, the operating criteria for Lake Powell and Lake Mead are to revert to the long range operating criteria used to model baseline conditions in the Final Environmental Impact Statement (“FEIS”) for the Interim Surplus Guidelines dated December 2000 (“2000 ISGs”) (i.e., modeling assumptions based upon a 70R Strategy for the period commencing January 1, 2026 (for preparation of the 2027 AOP)).

There are outstanding questions related to the long range operating criteria used to model baseline conditions in the FEIS for the 2000 ISGs. Colorado respectfully requests the Secretary and Reclamation consult with Colorado and the other Basin States on that criteria, modeling assumptions, and the No Action Alternative.

V. Other Considerations

Colorado, with the other Upper Division States, has committed to a process with the Lower Division States to develop a consensus Basin States Agreement Alternative. Participation of the Colorado River Basin Tribes is critical to this process. To that end, Colorado is engaging with the other Basin States to coordinate with the Colorado River Basin Tribes. Colorado and the other Upper Division States through the UCRC, are also engaging with the Upper Basin Tribes, and Colorado continues to work closely with the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe.

Colorado supports the efforts of the United States and Mexico through the International Boundary and Water Commission to engage in the separate but concurrent binational process to complement any guidelines for Post-2026 Operations at Lake Powell and Lake Mead. Colorado further supports the inclusion of the Basin States in the binational process.

VI. Reservation of Rights

Colorado’s comments are intended to highlight overarching issues that will require acknowledgment or clarification as the EIS process continues. Colorado’s failure to provide specific comments regarding details of this NEPA process shall not be construed as an admission with respect to any factual or legal issue or the waiver of rights for the purposes of any future legal, administrative, or other proceeding. Furthermore, Colorado reserves the right to comment further on Scoping and the EIS documentation as Reclamation proceeds with subsequent phases of the NEPA process to develop guidelines for Post-2026 Operations at Lake Powell and Lake Mead.

VII. Conclusion

As a Colorado River Basin State, Colorado has a unique interest in the water supplies of the Colorado River Basin. As a party to, and beneficiary of, the interstate compacts and laws that govern the management of the Colorado River, Colorado has an obligation to protect the



COLORADO

Upper Colorado River
Commissioner

Department of Natural Resources



COLORADO

Colorado Water
Conservation Board

Department of Natural Resources

interests of Colorado's water users who rely on the Colorado River. Colorado is committed to working with Reclamation as the formal NEPA process develops. Moreover, Colorado plans to partner and engage with the other Basin States, Colorado River Basin Tribes, water users, and stakeholders.

Colorado appreciates the opportunity to provide these comments on the NOI for the development of guidelines for Post-2026 Operations at Lake Powell and Lake Mead. We look forward to continuing our partnership with you and our partners across the Colorado River basin as we move forward in protecting and managing this critical resource into the future.

Rebecca Mitchell
Colorado Commissioner
Upper Colorado River Commission

Lauren Ris
Acting Director
Colorado Water Conservation Board



C9 SUMMIT



NOV. 14, 2023

- C-9 Summit 8:00 a.m. – 5:00 p.m.
- Dinner & Reception 5:00 p.m. – 8:00 p.m.
- The Westin Hotel - 10600 Westminster Blvd. Westminster, CO 80020

UNCHARTED WATERS

A Colorado City Has Been Battling for Decades to Use Its Own Water

Lawsuits, protests and fierce disputes over who controls water in the parched American West have held up a crucial pipeline.



Brett Henry, executive director for infrastructure of Thornton, Colo., at the city's water treatment plant.

David Gelles traveled to Colorado to talk with officials, landowners, developers and business owners about water scarcity and its effects. Photographs by Haiyun Jiang.

The third story in a series on the causes and consequences of disappearing water.

Sep. 5, 2023

Jack Ethredge could see the future. It was 1985, and Mr. Ethredge, then the city manager of Thornton, Colo., understood that sooner or later, the Denver suburb would need more water.

The population was booming, businesses were flocking to the Mountain West, and Thornton had no major lakes or rivers of its own, nor any meaningful amount of groundwater to draw upon, a fluke of geology and geography. The city had drilled a dozen or so wells over the years, but the groundwater's limited supply and high mineral content meant it wasn't fit for drinking.

So at Mr. Ethredge's behest, Thornton went shopping. The City Council bought about 17,000 acres of farmland 60 miles to the north, near Fort Collins, along with the associated water rights. When the time was right, Thornton would divert the water from the Cache la Poudre River that irrigated that farmland, put it in a pipeline and send it downstate.

"In the water business you have to be years and years ahead of the game," Mr. Ethredge, now retired, said in an interview.

In theory, Thornton's water woes were solved. In practice, the problems were just beginning. Today, almost 40 years later, the water Mr. Ethredge secured for his city remains out of reach.

Plans to build the pipeline have been stymied by bureaucracy, lawsuits and ferocious debates over who is entitled to use the snowmelt from the Rocky Mountains.



A neighborhood in Thornton, Colo. The city purchased 17,000 acres of farmland 60 miles north, near Fort Collins, decades ago.



Jack Ethredge, Thornton's former city manager.

Across the country, tensions over water are mounting as climate change, drought and development strain an increasingly scarce natural resource. The aquifers that supply 90 percent of the nation's drinking water are being severely depleted. Housing and other uses like agriculture are draining finite supplies of groundwater. And counties and cities are being forced to hunt for new sources of water, setting up clashes between neighboring communities.

Another proposed pipeline in Colorado that would have brought water from the San Luis Valley to Douglas County ran into fierce resistance from lawmakers in Denver and was abandoned. In Texas, the city of San Antonio built a 150 mile pipeline to bolster its water supply, only to leave residents in the rural area where aquifers were being tapped complaining that their wells were running dry. And in Thornton, there is no end in sight to the pipeline battle.

"It's a classic economic problem," said Jeni Arndt, the mayor of Fort Collins. "How do you distribute a scarce and shrinking resource when there's growing demand?"

After years of legal rancor, most of Thornton's neighbors grudgingly agree that the city has a legal right to the water from up north. But no one can agree on precisely how Thornton should access it, and a fight is raging over the city's plans to move that water down to the Denver suburbs. With the pipeline stalled, Thornton is forced to limit its growth, with all kinds of negative fallout.

City officials recently told a fast-growing company that makes a meat alternative using mushrooms that it had to pause expansion plans for lack of water. A major affordable housing project is on hold for the same reason. In total, the city says 18,000 housing units, which could accommodate about 54,000 people, are not being built because the pipeline is tied up in red tape.



Jeni Arndt, mayor of Fort Collins, where many residents oppose Thornton's proposed pipeline. "How do you distribute a scarce and shrinking resource when there's growing demand?" she said.



The Thornton water treatment plant.

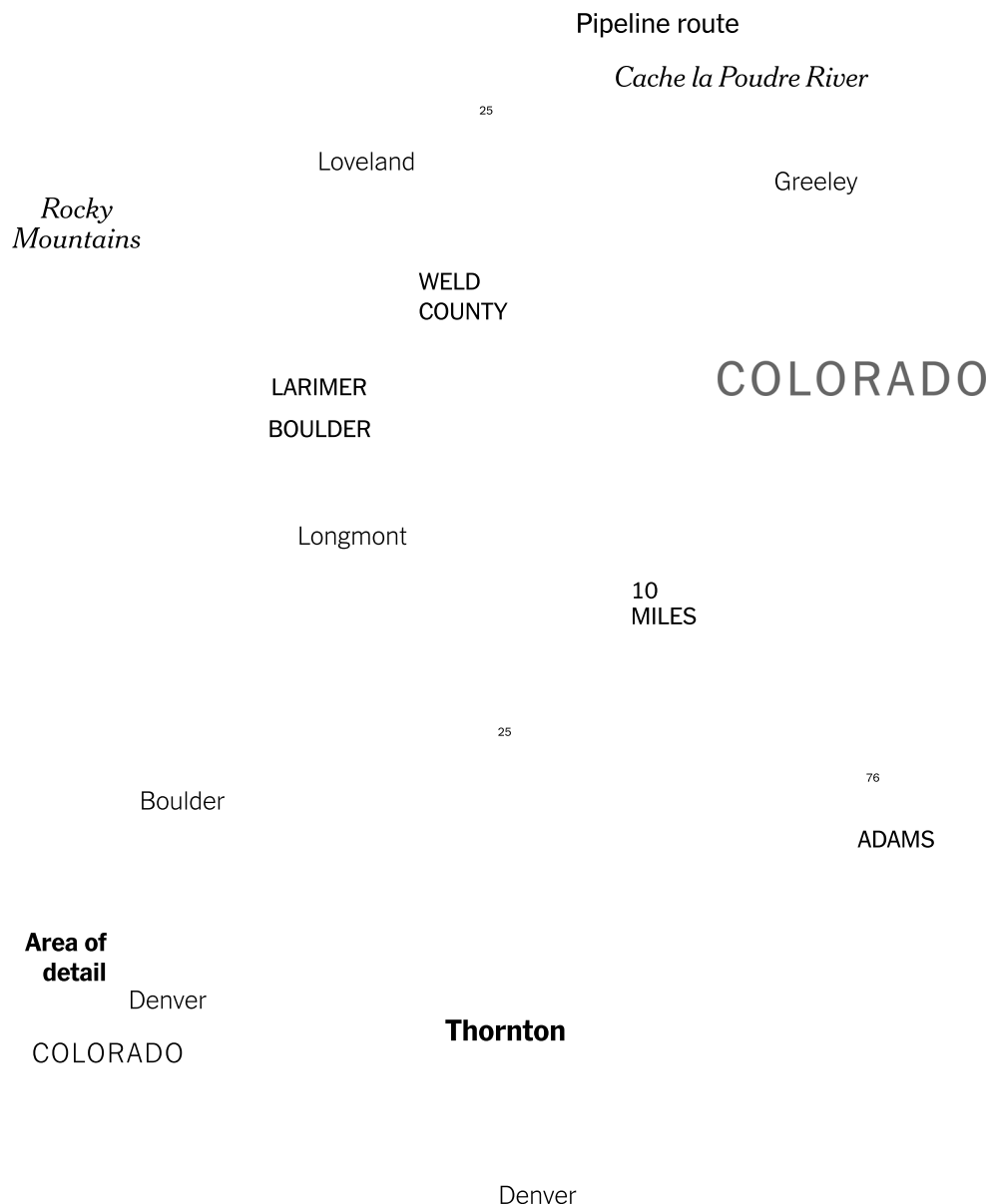
Drilling for groundwater isn't an easy option, either. The city's few wells have produced a consistent but small amount of non-potable water that is used to irrigate parks and other public spaces. But the water level in one monitoring well in Thornton has fallen by about 100 feet since measurements began, and other wells in the Denver Basin aquifer system have had similar drops in the past few decades.

"It's frustrating," said Brett Henry, Thornton's executive director for infrastructure. "We've had the engineering solutions all along, but we've got these political problems getting in the way. It doesn't add up."

Contested segment

**Fort
Collins**

**Thornton
Water Project**



Sources: U.S.G.S.; [Thornton Water Project](#) • By Leanne Abraham

Back when Mr. Ethredge secured the water rights up north, Thornton planners figured they would need that water by 2000. But a series of conservation measures and the construction of new reservoirs in the 1990s held off that deadline for more than a decade.

During those years, Thornton also overcame the first legal obstacles around its plan. Fort Collins and other cities and water districts sued Thornton, arguing it couldn't move water that was currently used for agricultural purposes downstream to be used for municipal needs, a

process derisively called “buy and dry” by critics. The Colorado Supreme Court ultimately decided in Thornton’s favor, appearing to clear the way for the construction of a pipeline.

Then, about a decade ago, it became clear Mr. Ethredge’s prediction was coming true. Thornton’s population had expanded by nearly 50 percent, from less than 100,000 residents in 2000 to about 150,000 today, and water supplies were getting tight. If the city was going to continue to grow, it would need to tap its reserves up north.

So in 2014, Mr. Ethredge, who was still city manager at the time, began working with the new City Council to develop plans for a pipeline that would carry water directly from the Poudre River to Thornton, bypassing the farms that had relied on that water for decades.



A reservoir in Fort Collins, roughly 60 miles north of Thornton.



A valley near Fort Collins.

In nearby Weld County, construction began. About seven of the planned 72 miles have now been built, at a cost of about \$20 million.

But in Larimer County, home to Fort Collins and some of the land that Thornton owns, the resistance was immediate.

“Of course I don’t want it here,” said Barry Feldman, who owns a restored ranch house on an expansive property where he keeps horses. “They will have to spend time digging, disrupting our lives, and there’s the possibility of repairs. Go bother someone else.”

Mr. Feldman, an active member of an opposition group called No Pipe Dream, said he believed Thornton had a right to access the water. But he doesn’t want the pipeline in his backyard.

Other opponents said they, too, were fine with Thornton accessing the water, but they wanted it to run down the Poudre River, where it could help revitalize an ecosystem long taxed by the region’s agriculture, then be put into a pipeline many miles downstream.

“We have one single mission, which is to protect and restore,” said Gary Wockner, an environmentalist and the founder of another opposition group, Save the Poudre, as he walked along the river bank in downtown Fort Collins. “We’re not trying to stop them from getting their water, we’re not trying to stop growth.”

But letting pristine snowmelt blend into the Poudre River and flow past urban areas and farmland, where it would mix with wastewater runoff, fertilizers and other contaminants before it would reach Thornton, was not acceptable to Mr. Henry and other city officials. The pipeline, they said, was the only viable option, and Thornton went ahead with plans for construction.

In 2018, under relentless pressure from the public, Larimer County officials denied Thornton the permits to build the pipeline, saying that the plans for the route were not specific enough.



Barry Feldman and Barbara Cohen of Fort Collins, who oppose the pipeline, which would run through their property.



Opposition to the pipeline in Fort Collins.

Thornton sued Larimer County, seeking to override its objections. But a district court and an appeals court ruled in favor of Larimer. Last year, Thornton said it would not appeal to the state Supreme Court.

Instead, Mr. Henry and his team have gone back to the drawing board and are working on a new, more detailed route for the pipeline. They expect to submit new plans in late September.

In the meantime, Thornton businesses are fuming. Late last year, the Home Builders Association of Metro Denver published an open letter calling for a swift resolution that would let Thornton access its water.

“By refusing to allow Thornton to access the water it has owned for nearly 40 years, Larimer County is impacting the livelihood and ability for families and individuals to live closer to where they work and inadvertently exacerbating Colorado’s housing attainability crisis,” wrote Ted Leighty, the group’s chief executive.

Maiker Housing Partners, a real estate developer, has suspended its plans to erect hundreds of units of affordable housing near a newly opened commuter rail station in Thornton.

“Thornton staff has informed Maiker that no new residential projects will be able to start construction until the water issue is fully resolved,” Peter LiFari, Maiker’s chief executive, said in a statement.

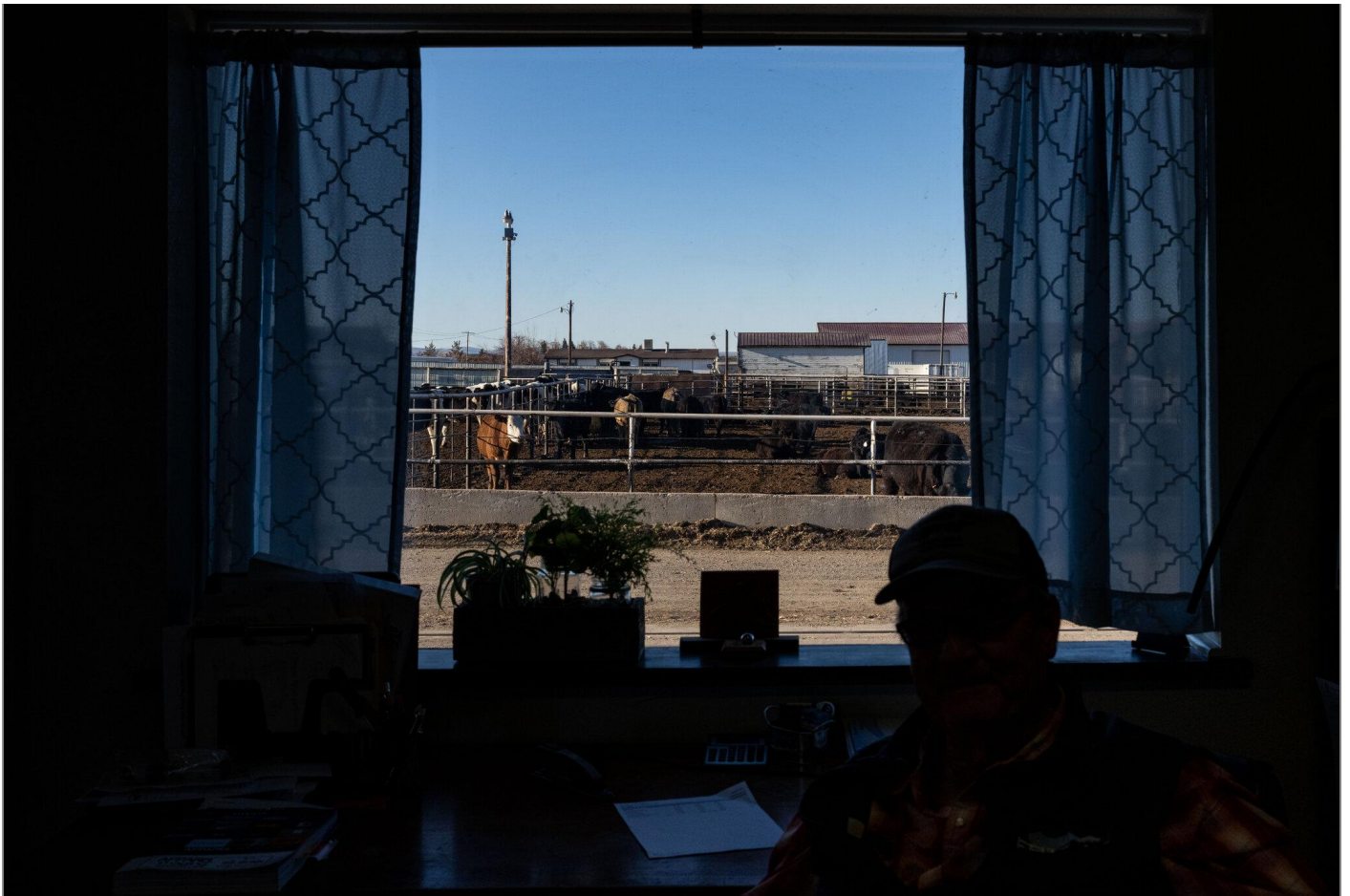
If the pipeline is built and the water from the Poudre starts flowing to Thornton, city officials say the city’s population could expand to 242,000 in the decades to come, from about 150,000 now.

Meati, the plant-based food company that Thornton officials said could not expand, declined to say how that was impacting its business strategy. But the company said it was trying to conserve water.

“We take conservation and sustainability seriously, and we have designed a purpose-built production system that minimizes reliance on, and efficiently uses, precious resources including water,” Christina Ra, a Meati spokeswoman, said in an email. “We are confident in our ability to scale.”



A stream near a gate that controls flow for the water supply in Laporte, Colo.



Roger Uthmann, a rancher, said he was at peace with the prospect of Thornton diverting water.

City officials are working to conserve water. During the winter, Thornton uses about 13 million gallons of tap water per day. That spikes to more than 40 million gallons a day during the summer, largely because of people watering their lawns with water that is suitable for drinking, a number Thornton is working to reduce.

“All of the western states need to realize that water is too precious to be throwing away on your lawn,” Mr. Henry said.

Thornton officials say that were it not for activists like Mr. Feldman and Mr. Wockner, they would have had their water by now.

Adding to the frustrations in Thornton is the fact that, according to Mr. Henry, the city has been a good steward of its land up north. Thornton has three full-time employees who manage the 17,000 acres, which are currently leased to farmers and ranchers. And while local governments are not required to pay taxes, Thornton has voluntarily paid millions of dollars in local taxes to Larimer County over the years.

Roger Uthmann, one of the ranchers who currently leases Thornton's land, said he was at peace with the prospect of the city diverting the water to municipal use. "They bought it fair and square," said Mr. Uthmann. "I don't have a problem with that."

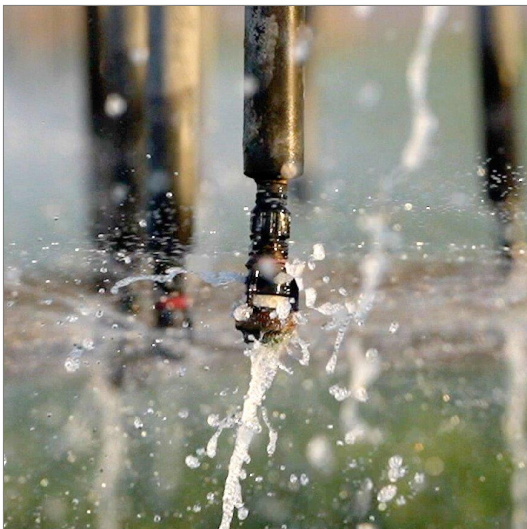
Thornton officials said they were confident they would eventually prevail in their quest to run a pipeline from the Poudre down to the outskirts of Denver, although it could take many more years. They have yet to win over residents of Larimer County. As delays drag on, costs go up. The pipeline's price tag is now expected to exceed \$500 million.

But even if they finally achieve their goal, with climate change heating the West and aquifers running dry, it may not be enough to slake the thirst of a ballooning population.

"This is never going to be wrapped up," Mr. Ethredge said. "Water is something that, in Colorado, you can't do once and forget. You have to do it all the time."

UNCHARTED WATERS

A series on the causes and consequences of disappearing water.



America Is Using Up Its Groundwater Like There's No Tomorrow



Big Farms and Flawless Fries Are Gulping Water in the Land of 10,000 Lakes





A Colorado City Has Been Battling for Decades to Use Its Own Water

Mira Rojanasakul contributed reporting.

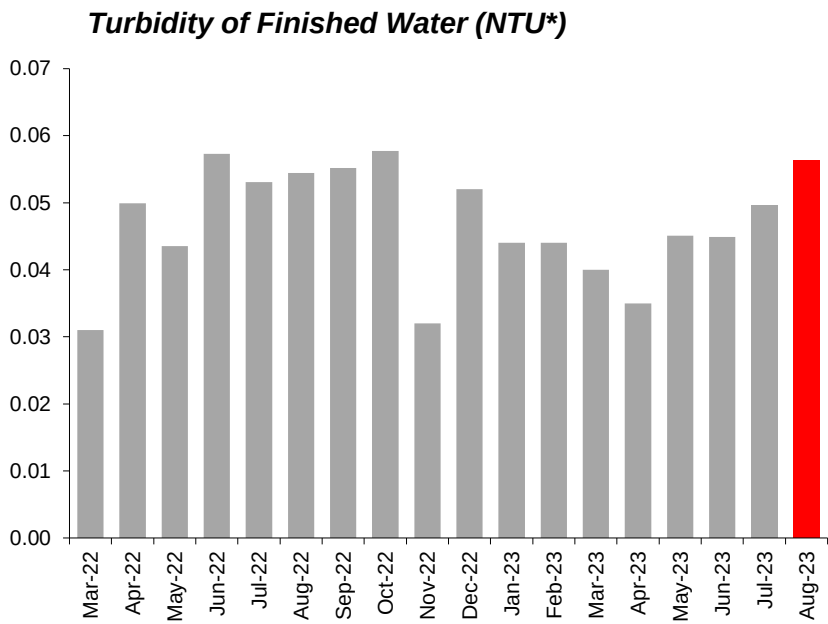
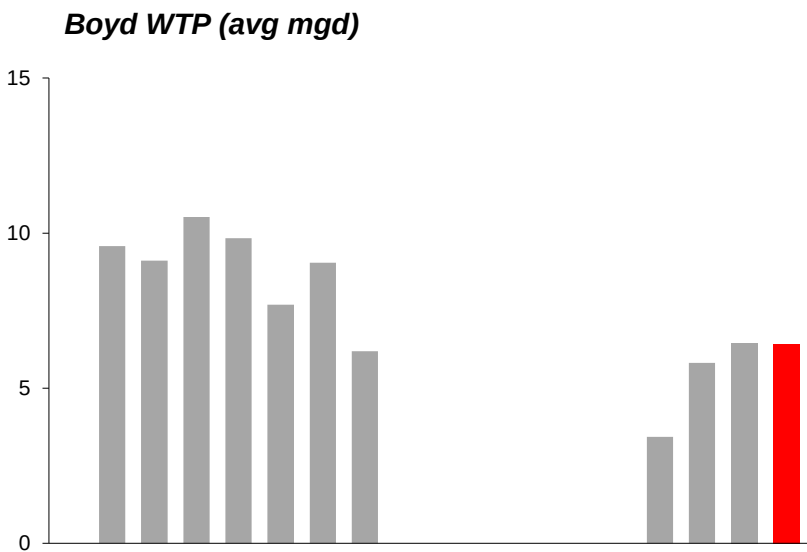
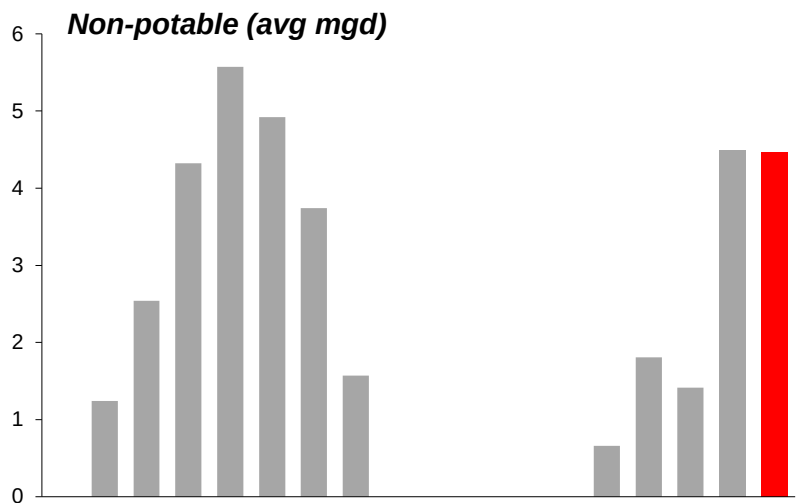
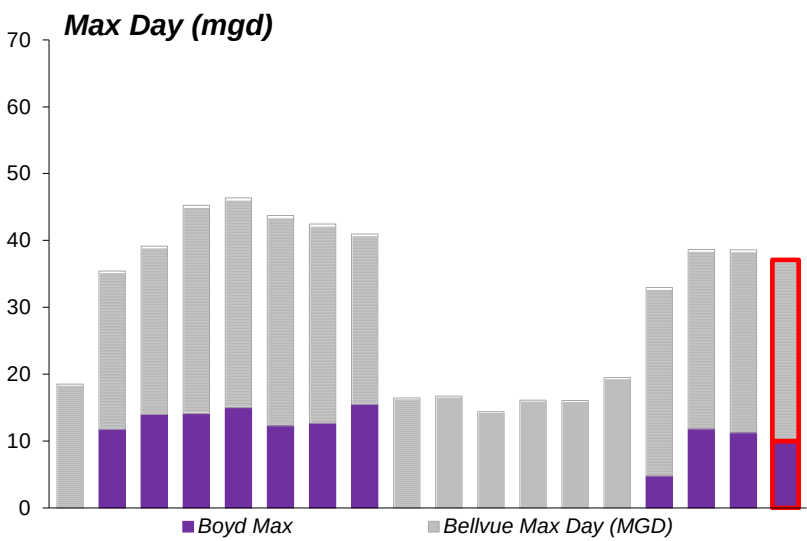
Produced by Claire O'Neill, Matt McCann and Umi Syam. Edited by Lyndsey Layton and Douglas Alteen.

Water Treatment

Bellvue Water Treatment Plant operates year-round with a transmission capacity of 29.1 million gallons per day (mgd) (plant capacity is 32 to 35 mgd). Water sources include Poudre River direct flows, Colorado-Big Thompson (C-BT), Windy Gap, High Mountain Reservoirs, Laramie-Poudre Tunnel, and Water Supply and Storage. Average volume is 19,000 acre-feet a year (2000-2011). The plant was built in 1907, with its last treatment upgrade in 2009. Solar panels were added in 2014.

Boyd Water Treatment Plant operates normally from April to October with a plant capacity of 38 mgd (transmission capacity is 40 mgd). Water sources include Greeley-Loveland Irrigation Company, C-BT, and Windy Gap. Average Volume is 8,200 acre-feet (2000-2011). The current plant was built in 1974, with its last treatment upgrade in 1999. Solar panels were added at Boyd in 2014. In 2016, tube settlers and platte settlers were replaced in the sedimentation basins. In 2018, all old existing chemical lines were replaced with new lines and the piping was up-sized to carry more chemical. A PLC upgrade was done on the SCADA system. Sludge pumps were replaced and hooked into the Trac Vac system that pulls sludge out of the sedimentation basins.

Combined, Bellvue and Boyd can treat a maximum of 70-73 million gallons per day.



Starting May 2016 Bellvue turbidity measurements will use a new method resulting in more accurate readings.

*Turbidity limit: 95% of samples must be below 0.3 NTU.

Turbidity is the measure of relative clarity of a liquid. Clarity is important when producing drinking water for human consumption and in many manufacturing uses. Turbidity is measured in Nephelometric Turbidity Units (NTU).

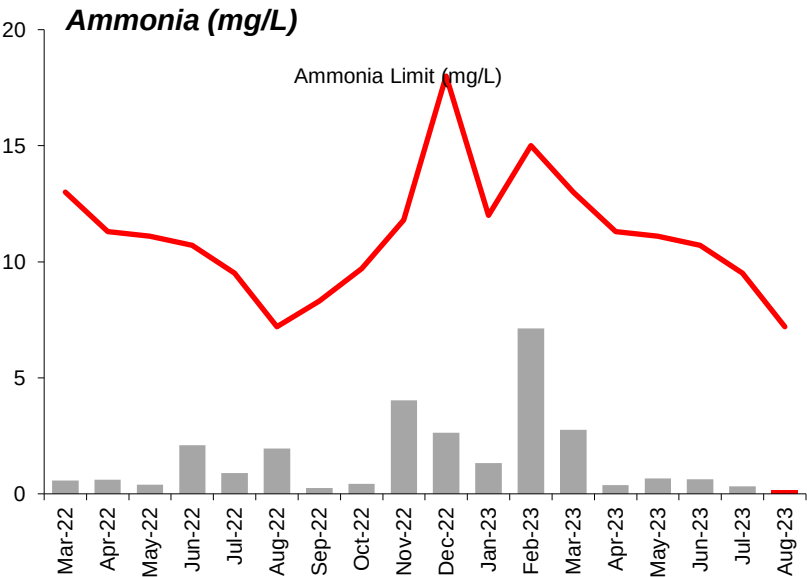
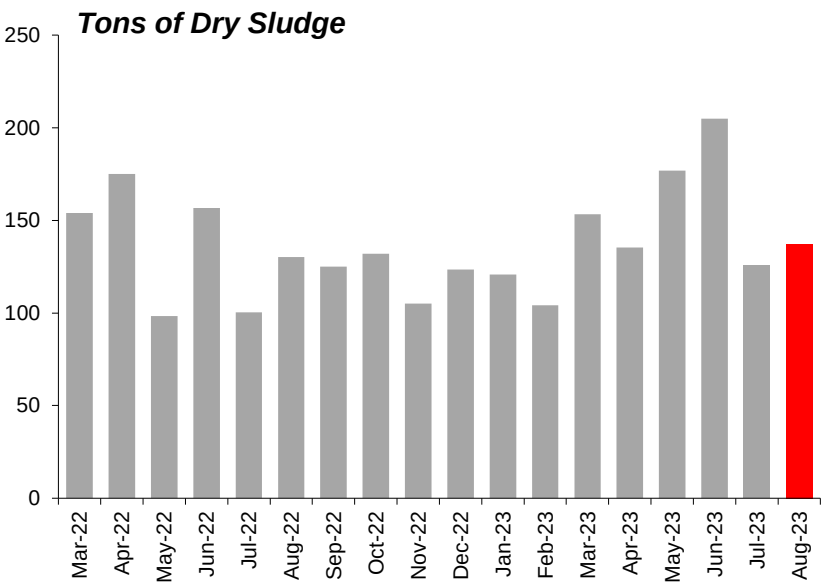
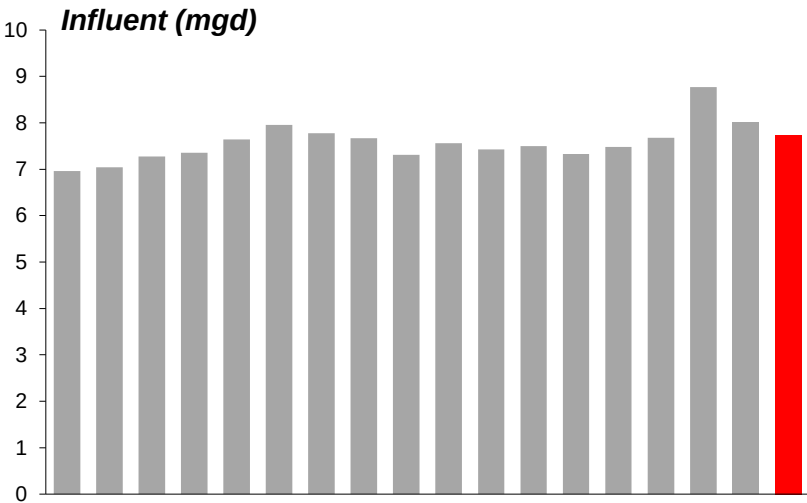
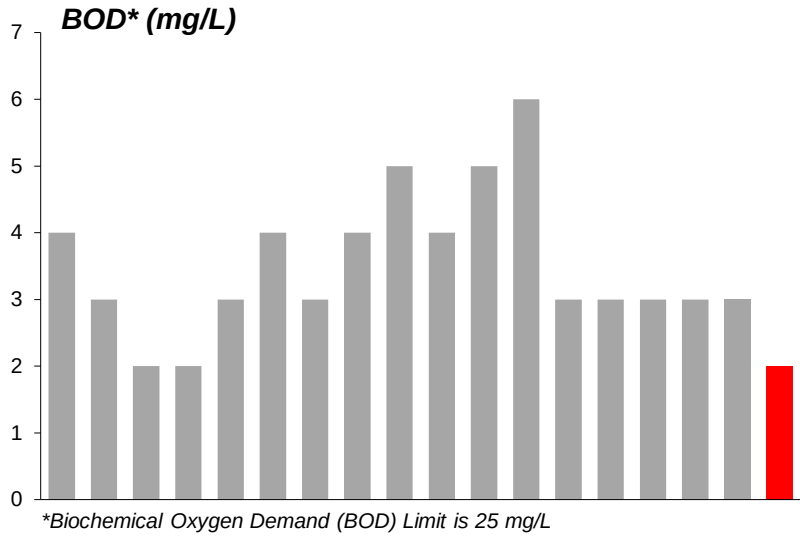
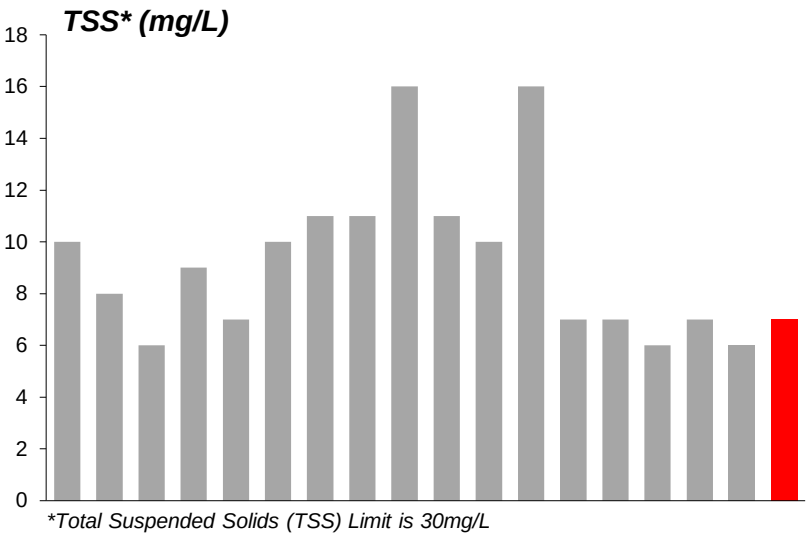


Wastewater Treatment

The Water Pollution Control Facility (WPCF) staff are dedicated environmental professionals who provide quality, safe and cost-effective wastewater treatment services for the citizens of Greeley. The WPCF treats wastewater to meet or exceed Environmental Protection Agency (EPA) and Colorado Department of Public Health & Environment requirements.

In 2011, the WPCF received an Xcel Energy Custom Efficiency Achievement Award for saving 2.78 million kWh and reducing CO2 emissions by 1,584 tons. In 2012, the WPCF received the Rocky Mountain Water Environment Association's (RMWEA) Sustainability Award for Colorado demonstrating excellence in programs that enhanced the principles of sustainability. A Certificate of Achievement from the Colorado Industrial Energy Challenge program managed through the Colorado Energy Office was received in the same year. In 2013, the plant received the City of Greeley's Environmental Stewardship Award for outstanding efforts to reduce energy (watts), conserve energy and water, reduce air and water pollution, and educate and encourage others to be environmental stewards. Also, in 2013, the plant was the recipient of a Bronze Award from the Colorado Environmental Leadership Program. In 2015, after having 5 years without a plant violation, the plant received the 2015 National Association of Clean Water Agencies (NACWA) Platinum Peak Performance award for the City of Greeley Water and Sewer Department.

Note: the red column indicates the current month.



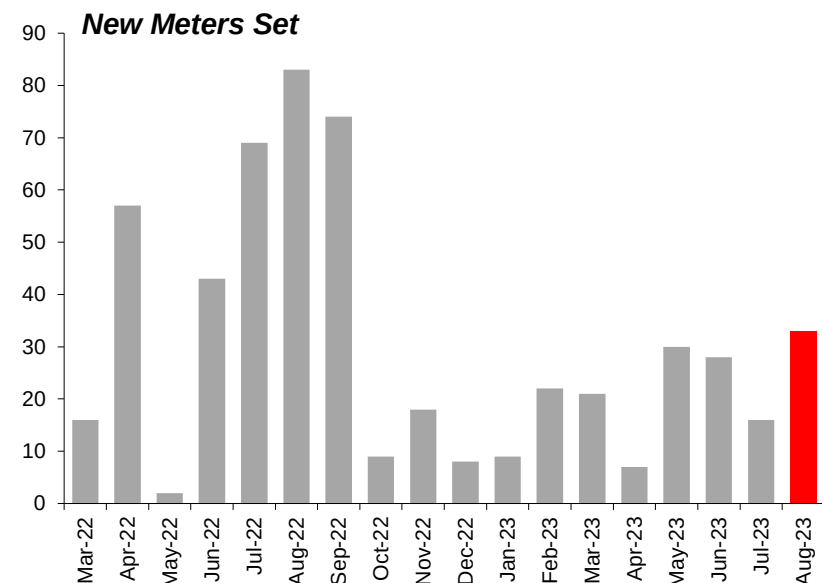
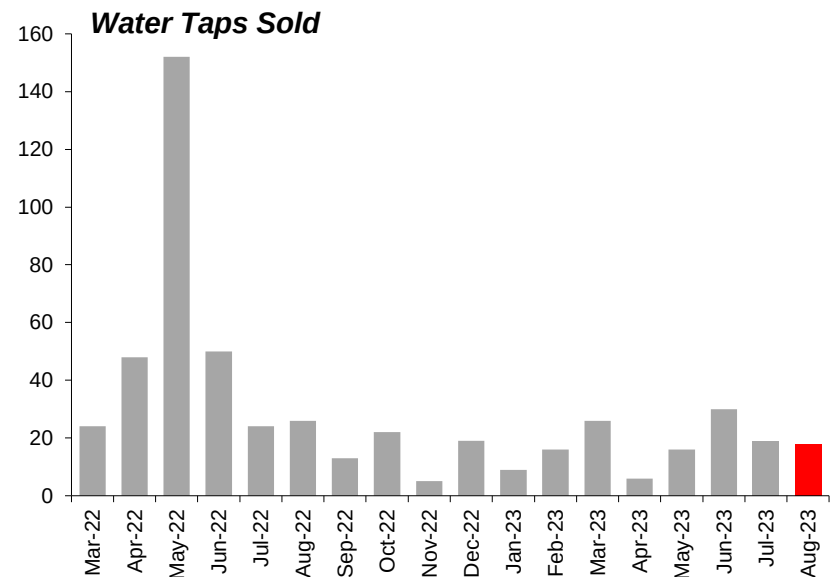
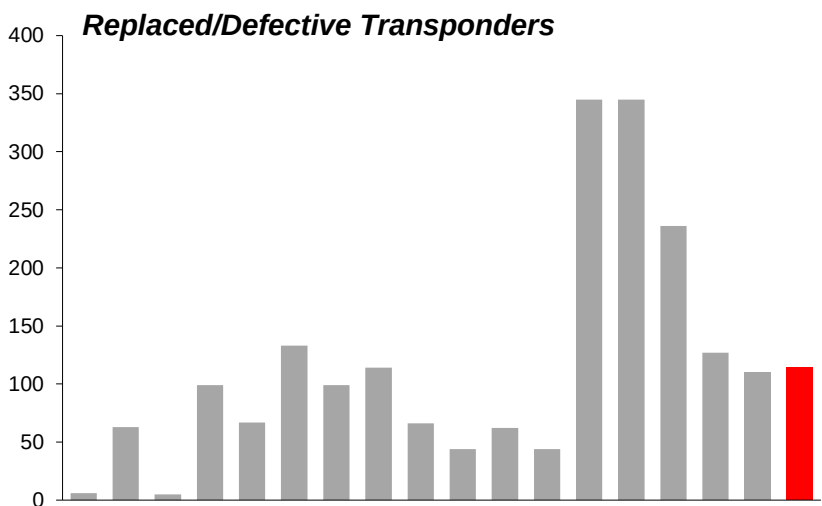
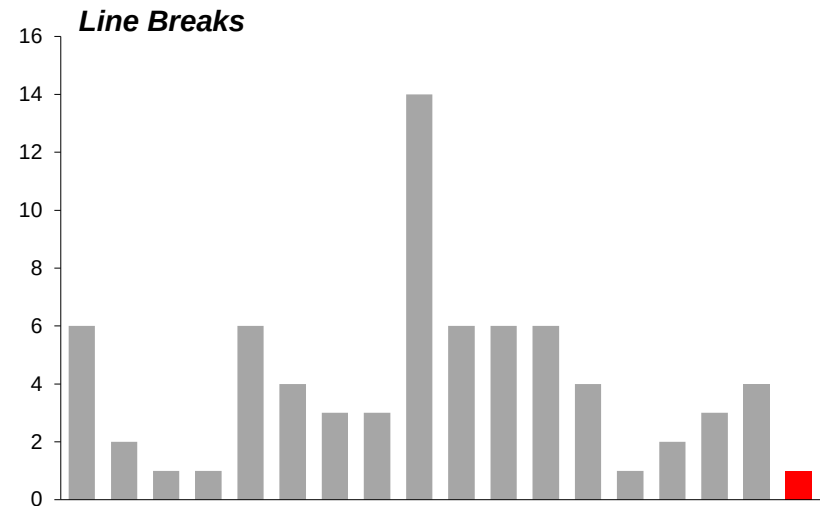
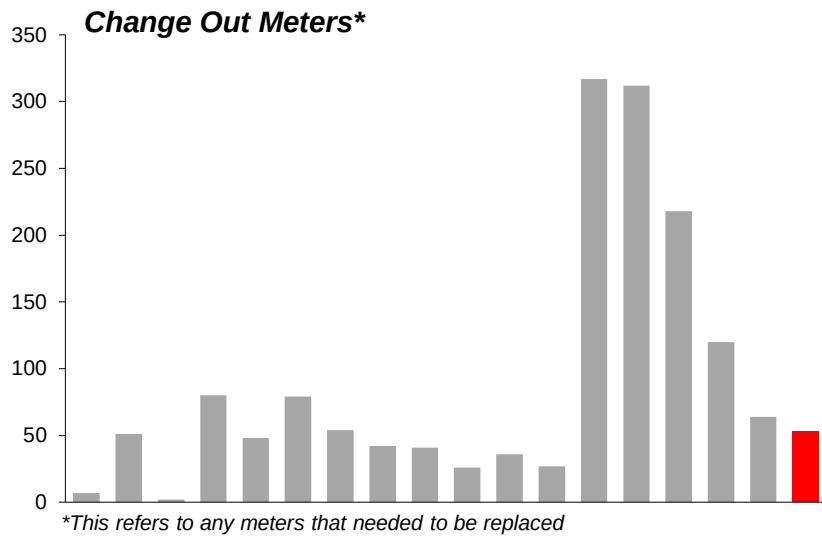
Water Distribution

The Greeley water distribution system consists of various sizes of pipes that generally follow the streets within the City. The distribution system serves residences and businesses in Greeley, Evans and Garden City, and the system is divided into four pressure zones.

There are 69.75 million gallons of potable water storage in Greeley. The water is stored within three covered reservoirs and one elevated tank; 23rd Avenue - 37.5 million gallons, Mosier Hill - 15 million gallons, and Gold Hill - 15 million gallons. The system also has 476 miles of pipeline, 24,233 water meters and 3,378 fire hydrants.

The water pipes in the distribution system vary in size from 4" to 36". Pipe material is steel, ductile iron, cast iron, or polyvinyl chloride. The age of the pipes varies from the 1890's to new installations.

Note: the red column indicates the current month.



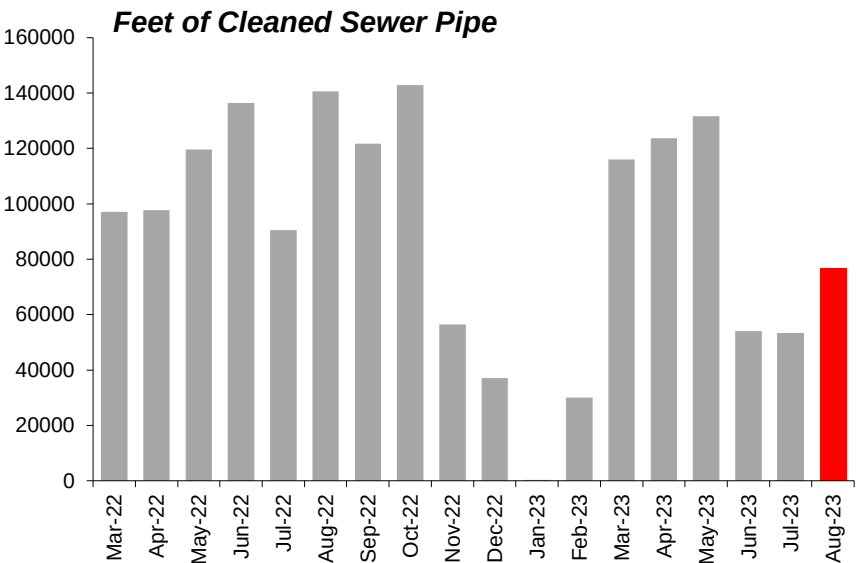
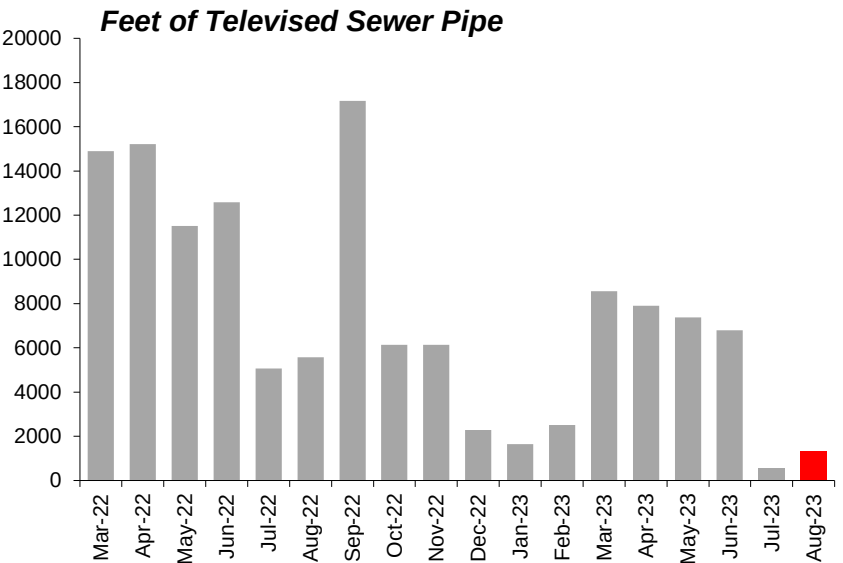
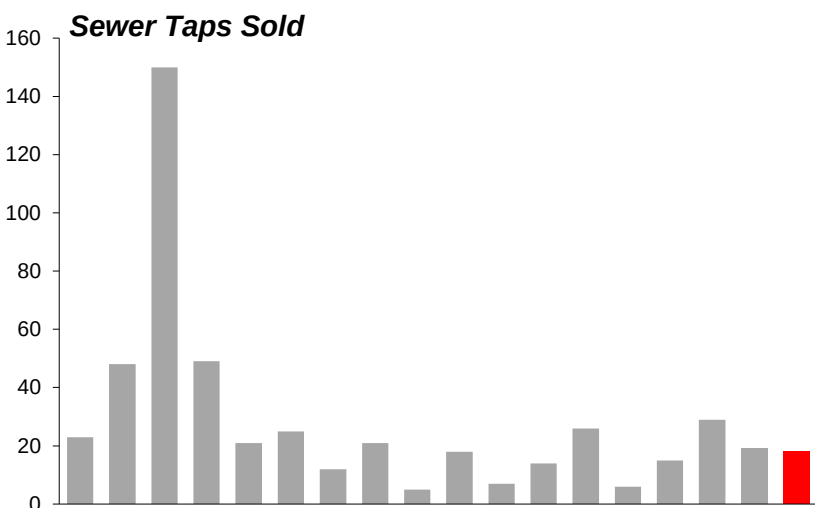
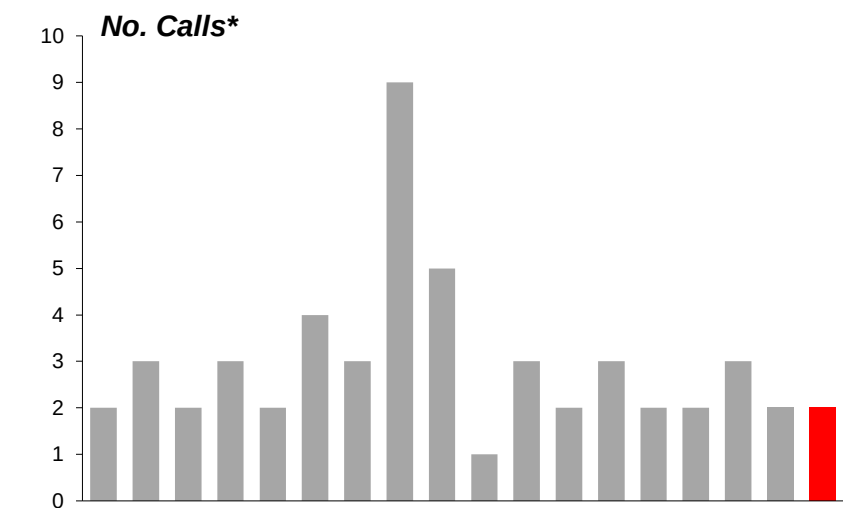
Wastewater Collection

The mission of the Wastewater Collection Division of the Water and Sewer Department is to protect community health by transporting wastewater away from homes and businesses. This includes respecting property values and public safety by reducing the frequency of blockages in the sanitary sewer lines.

A wide variety of work is performed including routine cleaning of sewer lines, inspection of sewer lines, maintenance of the sewage pumping stations, rehabilitation of the system and responding to emergencies.

The wastewater collection system dates back to 1889. At the end of 2017, the system had a total of 364.8 miles of line and 10 sewage pumping stations. The sewer service area is approximately 51 square miles. Over the last 10 years, the system has grown by 17 miles.

Note: the red column indicates the current month.

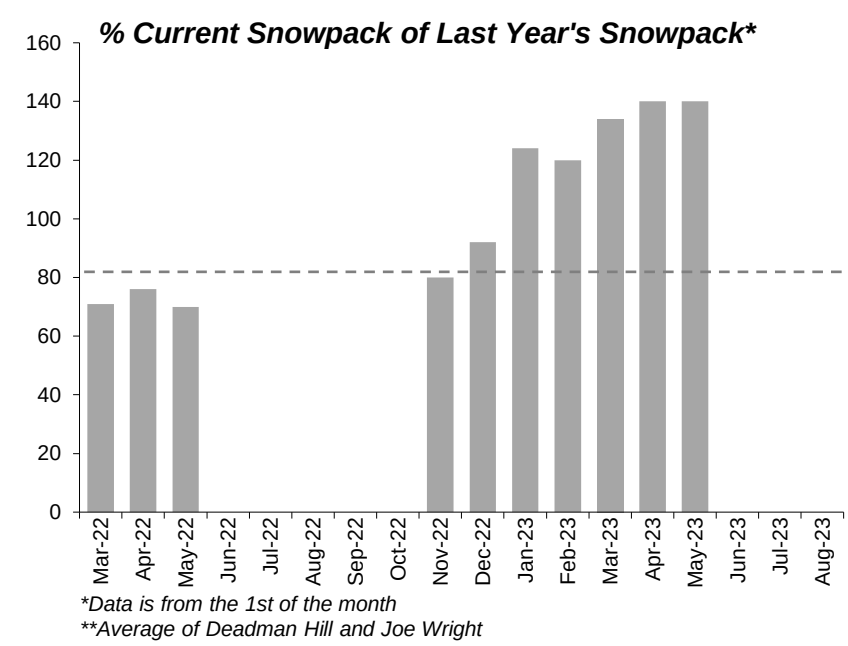
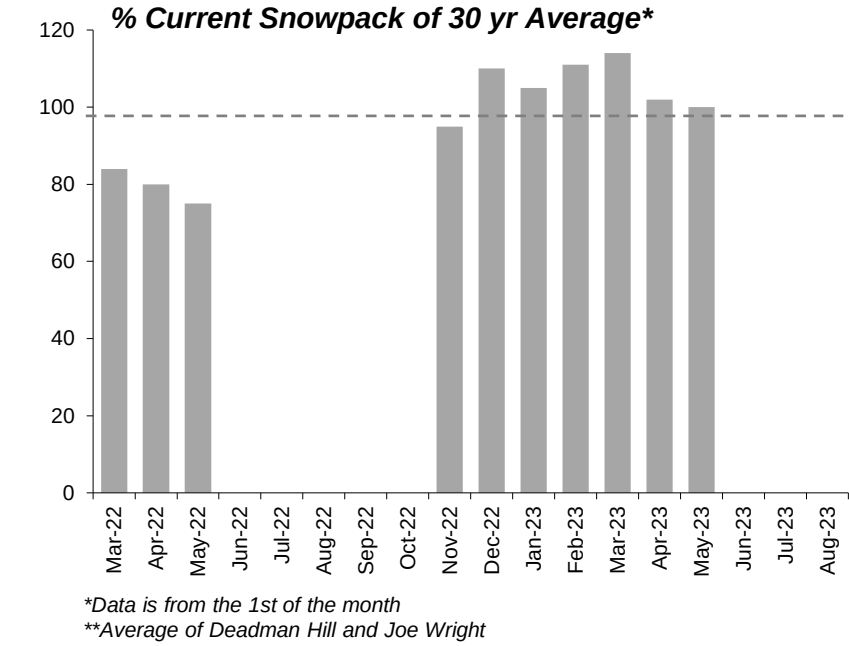
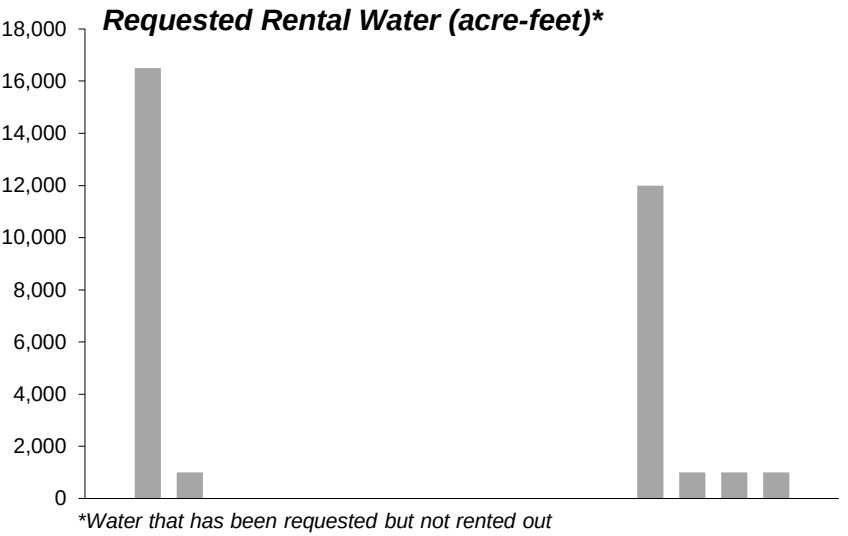
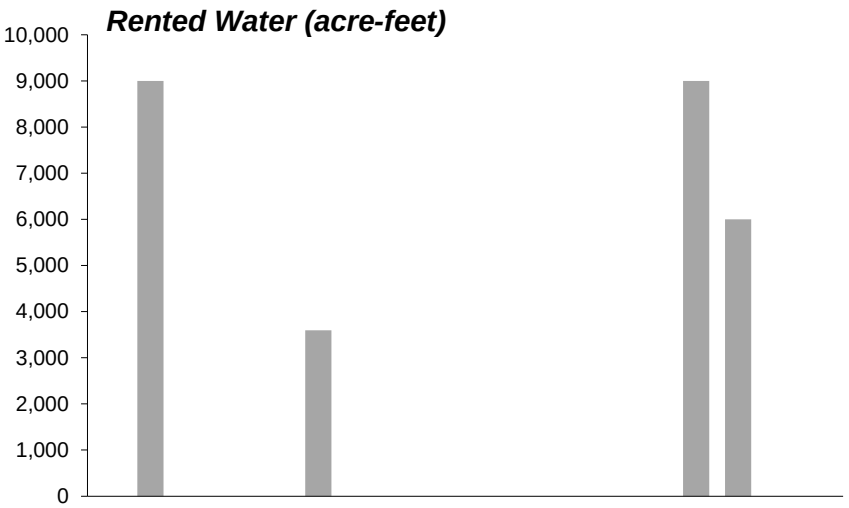
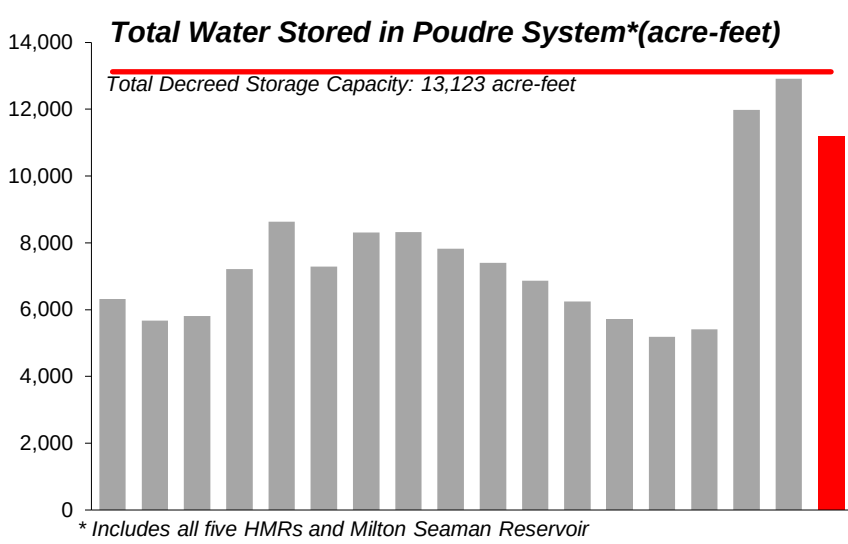
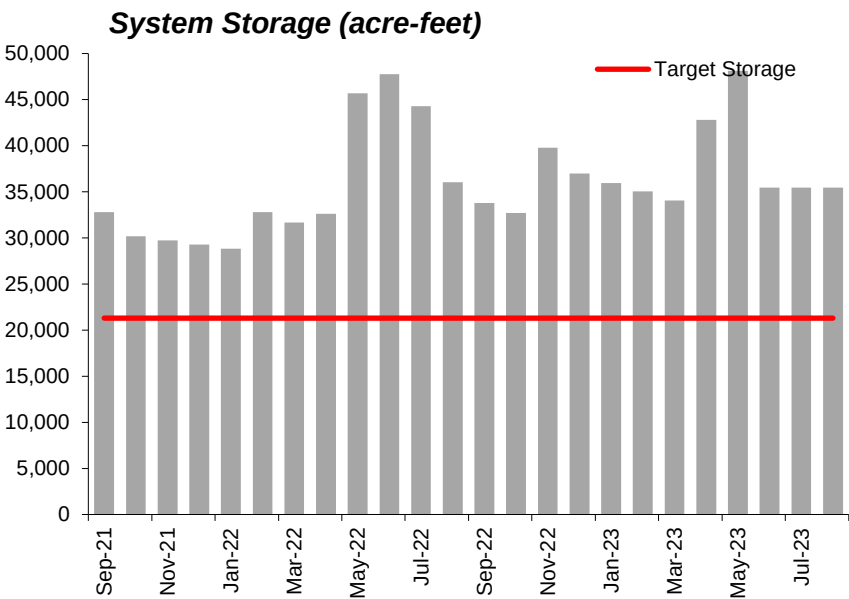


Water Resources

Greeley has numerous water rights in four river basins; the Upper Colorado River, Cache La Poudre, Big Thompson and Laramie River. The Water Resource staff must account for all of this water and comply with the rules of the Colorado Water Court and the State Engineer’s Office which is in charge of allocating all of Colorado’s water resources. Approximately one-third of the City’s water supply comes from agricultural water rights. These water rights must be formally changed to municipal use by a special legal process through the Water Court. In this court, Water Resource staff and attorneys also defend the City’s water rights against adverse claims from other parties.

Greeley’s goal is to have enough water in carry-over storage to sustain Greeley through a 50-year critical drought. Water in excess of this carry-over drought supply can be leased to agriculture, both for revenue and to support our local agricultural community. Modeling has shown that, given existing population and demand factors, Greeley will have sufficient water for citizens, if at the beginning of the 6-year long, 50-year critical drought, there is 20,000 acre-feet in storage on April 1st of the following year.

Note: the red column indicates the current month.



Treated Water and Weather Data.

January was a cold month with an aveage temperature of 24°F. The average temperature for Febuary was 27°, about 4° lower than the historical. Its been another cold month in March with an average temperature of 34.8°F, which is still 4° lower than the historical average. The average temperature in April was 47.33°F which is very close to the historcal average. May's average temperature was slightly above average at 59.23°. June's average temperature was 65.15°F, about 2° lower than the historical average. The average temperature in July was 72.95° F, which was very close to the historical average. The average temperature in August was 71.9°F, slightly above average

Greeley received 1.1 inches of precipitation in January, this is more than double the historical average for this month. Febuary brought 0.51 inches of precipitation. Total precipitaion for March was 0.81 inches, bring the total so far this year to 2.42. Greeley reveiced 1.14 inches or precip in April, bringing the cummulative precip very close to the historical. Greeley received an astonishing 5.63 inches of precitataan in May, this is close to 3 inches above average. Another 3.16 inches of precipitation fell in June, which is more than double what has historically been received in June 3.37 inches of rain fell in July, bringing the annual total to 15.72 inches. In August, another 1.17 inches of rain fell.

