

**City of Greeley
Water and Sewer Board
Minutes of May 18, 2022
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:01 p.m. on Wednesday May 18, 2022.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Joe Murphy, Cheri Witt-Brown, Tony Miller, Manuel Sisneros, Assistant to the City Manager Lindsay Kuntz, Finance Director John Karner

Water and Sewer Department staff:

Director Sean Chambers, Deputy Director Adam Jokerst, Utility Finance Manager Erik Dial, Water Resources Manager Jen Petrzelka, Water Resource Planning Manager Kelen Dowdy, Water Resources Administrator II Alex Tennant, Water Resources Administrator III Leah Hubbard, Water Resource Administrator I Megan Kramer, Senior Administrative Assistant Crystal Sanchez and Interim Office Manager Gigi Allen

Legal Counsel:

Counsel to Water & Sewer Board Attorney Jim Noble, Environmental and Water Resources Attorney II Dan Biwer, Senior Attorney Michael Axelrad

Guests:

Emeritus Board Member Robert Ruyle

2. Approval of Minutes

Ms. Witt-Brown made a motion, seconded by Mr. Otis, to approve the April 20, 2022, Water and Sewer Board meeting minutes. The motion carried 7-0.

3. Approval of and/or Additions to Agenda

Item 6 was changed from a resolution to a motion.

4. Welcome New Employees and Promotions

Mr. Chambers provided an introduction of new Water and Sewer Department employees starting this month and recognized the departures of Adam Jokerst and Jennifer Dial.

5. Tri Annual Water Court Update

Leah Hubbard discussed that 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 first three months of 2022, Greeley filed 4 Statements of Opposition and settled in four cases. Greeley is currently an opposer in 30 cases. Expenses in this period totaled \$202,778 as of May 3, 2022. The memorandum and presentation presented summarized significant activities over the past trimester.

6. Conveyance of Easements on City Property at Boyd Lake Water Treatment Plant

Sean Chambers gave a presentation on the draft City Council ordinance authorizing the conveyance of two (2) recreational trail easements across a portion of the Boyd Lake Water Treatment Plant property to allow the City of Loveland to construct its proposed Centerra Trail Project.

The City of Greeley's ("Greeley") Boyd Lake Treatment Plant, located along the south side of Boyd Lake in Loveland, provides for the seasonal and back up treatment of water resources for drinking water for Greeley water customers. Treatment functions at the Boyd Lake facility supplements the Bellvue Water Treatment Plant by providing additional water in times of high demand or backup for disruptions to Bellvue WTP.

The City of Loveland ("Loveland") has planned a trail expansion project to construct a hard-surface trail between Denver Avenue and Boyd Lake Avenue along the south shore of Boyd Lake, west of Centerra. A portion of the trail is designed to cross the northern boundary of the property owned by Greeley as shown in Attachment 1.

Site meetings have been held with Greeley Water & Sewer staff to review the proposed trail location and request adjustments, as needed. Water & Sewer staff have reviewed and approved a final alignment of the trail, ensuring that the planned location does not interfere with current or future property needs by Greeley.

To construct the trail, Loveland needs to acquire two (2) permanent recreational trail easements on Greeley's property. An appraisal has been completed for the value of

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the easements and Loveland will compensate Greeley \$131,800 for the easement interests.

Department Staff have been in coordination with Loveland staff and consultants and set certain requirements for signage, safety and security.

Vice Chairman Todd moved the Board find that the proposed easements are not being used nor held for a governmental purpose, recommend that City Council authorize conveyance of the easements by adoption of an ordinance in the form enclosed, and authorize City staff to make minor revisions to the easements before their execution, provided that the material substance of the easements remains unchanged. Mr. Miller seconded the motion. The motion carried 7-0.

Crystal Sanchez, Gigi Allen, Kelen Dowdy, Jen Dial, Erik Dial, Megan Kramer, Alex Tennant, left the meeting at 2:19 p.m.

7. Executive Session

Chairman Evans moved that the Board hold an executive session to address the following matter as provided by C.R.S. §24-6-402(4)(b), C.R.S., and Greeley Municipal Code Sec. 2-151:

For the purposes of providing the Board with an update of The City of Greeley v. The Taylor & Gill Ditch Company, et al., Larimer District Court Case No. 2021CV30881, and for providing legal advice as to the current situation regarding negotiations and options for moving forward with the litigation concerning a Right of First Refusal Agreement for carriage rights of excess capacity in the Taylor and Gill ditch. Seconded by Mr. Otis.

The motion carried 7-0.

Present at the Executive Session, starting at 2:20 pm were:

Chairman Harold Evans, Vice Chairman Mick Todd, Manual Sisneros, Tony Miller, Cheri Witt-Brown, Fred Otis, Joe Murphy, Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Water Resources Admin. III Leah Hubbard, Assistant to the City Manager Lindsay Kuntz, Senior Attorney Michael Axelrad, Environmental and Water Resources Attorney Dan Biwer, Attorney Jim Noble.

Guest: Emeritus Board Member Robert Ruyle

Executive Session ended at 2:48 p.m.

Gigi Allen and Crystal Sanchez returned to the meeting at 2:49 p.m.

8. Approval of Excess Capacity Carriage Agreement with Taylor & Gill Ditch Company and Stipulation and Settlement Agreement with The Taylor & Gill Ditch Company, William and Paulette Seaworth, and HF2M, Inc.

Adam Jokerst presented that in 2014, Greeley purchased from the Taylor & Gill Ditch Company ("Company") a right of first refusal ("ROFR") for "excess capacity" in the Taylor & Gill Ditch Ditch ("Ditch"). Excess capacity is defined as the unused physical space within the ditch. In December 2018, the Company entered into a contract with William and Paulette Seaworth for use of excess capacity in the ditch, contrary to the terms of Greeley's ROFR agreement. Greeley subsequently filed a complaint with the Larimer County District Court in 2021. That lawsuit culminated in the enclosed Stipulation and Settlement Agreement ("Settlement Agreement"). The Settlement Agreement provides Greeley rights to make use of the ditch's excess capacity, as documented in the Excess Capacity Carriage Agreement ("Carriage Agreement"), in exchange for dismissing the lawsuit.

Key terms of the proposed Carriage Agreement are:

- Greeley has senior rights to excess capacity in the ditch, up to 13.8 cfs.
- Greeley has 30 years to begin using the excess capacity and the term will be 20 years after beginning use.
- The agreement may be extended, and such extension shall not unreasonably be withheld.
- Greeley pays an upfront consideration of \$12,000.
- Greeley pays a "running charge" of \$13.50 for every acre-foot of water delivered under the agreement. The running charge escalates 3% per year, compounded annually.

Vice Chairman Todd moved that the Board approve the Excess Capacity Carriage Agreement with The Taylor & Gill Ditch Company and the Stipulation and Settlement Agreement with The Taylor & Gill Ditch Company, William and Paulette Seaworth, and HF2M, Inc. in the forms enclosed, and delegate authority to the Director of Water and Sewer to approve minor revisions to the agreements before their execution, provided that the material substance of the agreements remains unchanged. Mr. Murphy seconded the motion. The motion carried 7-0.

9. Legal Report

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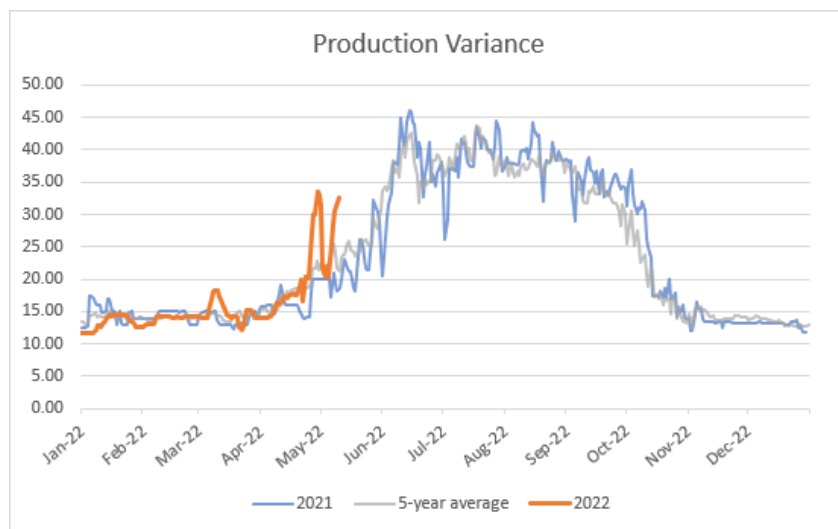
Jim Noble provided the legal report for this month which covers a single water court case, 22CW3039. Mr. Noble recommended that the Board authorize filing a statement of opposition to this case, which involves an application for diligence and to make a conditional storage water right partially absolute for Milliken Reservoir. Although this reservoir takes its supply from the South Platte River, it is used as a source for exchanges on the Cache la Poudre River.

Vice Chairman Todd moved that the Board authorize the filing of a statement of opposition in Case No. 22CW3039, and for staff and legal counsel to seek resolution of issues raised by this case consistent with Water and Sewer Board Resolution No. 3-15. Mr. Miller seconded the motion. The motion carried 7-0.

10. Director's Report

Sean Chambers provided a summary or update on additional items of Board interest:

- Water Treatment Facilities operations update
 - Bellvue North Filter Plant back online and operating after maintenance, valve replacement and sampling.
 - Boyd WTP running at low end of its output capacity ~ 8 MGD
 - Treated water production variance plot through 5/10/22



- TB Concrete Repair Phase 1 Work Complete
- Request for Council authorization to initiate legal action to project the city and its Water Enterprise from the damages arising from TB-1 Concrete

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

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

Chairman Evans adjourned the meeting at 3:12 p.m.

DocuSigned by:

Harold Evans

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Harold Evans, Chairman

DocuSigned by:

Raymond C. Lee III

Raymond Lee, Board Secretary