
WATER AND SEWER BOARD COMMUNICATION

DATE: January 19, 2012

AGENDA NO.: 5. A.

SUBJECT: Policy Discussion Concerning Bulk Water Sales

PRESENTED BY: Earl H. Smith, P.E., Director of Public Works/Planning

AGENDA ITEM DESCRIPTION:

In October 2011, the Water and Sewer Board conducted a discussion concerning the City's bulk water sales policy. The primary driving force behind the discussion were concerns over the sale and use of water to companies supplying water to the oil and gas exploration industry. At that time it was decided we would gather more information and return to the Board with a recommendation concerning revisions to the program.

You may recall there were three primary concerns we face when considering the sale of large volumes of water. These are:

1. Consideration of our water use cap with the City of Greeley
2. Use of C-BT water outside the Northern Colorado Water Conservancy District Boundaries
3. Concern over our ability to meet the requirements of our change cases and demonstrate that we are meeting our return flow obligations to the South Platte

In consideration of the first issue, we should analyze the impact of any bulk water sales on our system development charge for usage above our volumetric base of 2,600-acre feet. For 2012, our system development charge we would pay to Greeley would be \$15,437/AF above our cap figure. This translates to a cost of \$47.37/1000 gallons. We net \$5.37/1000 gallons (\$8.17/1000 g - \$2.80/1000 g) on bulk water sales. This calculates into a \$42.00/1000g loss.

Attached as Exhibit A to this communication are the proposed rules governing the use of C-BT and Windy Gap water for the development of oil and gas wells. In essence the Northern District is banning the use of C-BT for use in the oil and gas exploration industry because it cannot be guaranteed the water will be used within the District. There are severe penalties associated with any violation of these rules.

In reference to the third issue, if the City were to begin selling treated water attributable to Transferred Water Rights through bulk water sales outside the City, it would call into question the formula used to determine return flows from base use attributable to Transferred Water Rights. The Court did retain jurisdiction (paragraph 29) to review the return flow formula, but our water resource engineer, Doug Seely would need to evaluate how bulk water sales would impact the return flow formula and how that might affect the City's return flow obligations. If the bulk water sales impact the return flow formula, there could be additional expense to get Water Court approval to modify the formula.

Attached as Exhibit B to this communication are the current policies and procedures concerning bulk water sales with suggested changes. The existing rules do not provide any limitations on the use of bulk water sales which could become problematic in the future based upon the issues discussed above. Staff recommendation is to limit the use/sale of bulk water to within the City of Evans. The proposed changes also specify that we can limit or curtail the program at our discretion.

FINANCIAL SUMMARY:

n/a

RECOMMENDATION:

It is recommended the Water and Sewer Board adopt the new bulk water sales policy.

SUGGESTED MOTIONS:

"I move to adopt the new bulk water sales policy."

"I move to deny adoption of the new bulk water sales policy."

Exhibit B

CITY OF EVANS

DEPARTMENT OF PUBLIC WORKS

HYDRANT METER PROCEDURES

The following is a brief outline of the procedures to be used for taking a request for a fire hydrant meter. Only the top half of the form (above the billing information) needs to be filled out at the time of the request. This form will be available at the Evans Community Complex, Customer Service Unit ~~Public Works~~ reception counter and be coordinated by a the Customer Service Representative ~~Public Works Secretary~~.

Billing and General Information

1. Record the date and time of request.
2. Obtain the appropriate billing name and address as well as the name and address of the company making the request, if different than the billing information. If a company other than the one to be billed is making the request, the Public Works Secretary will contact the company/individual to be billed to verify that it is acceptable to bill them for the meter usage. Ensure the company has a City of Evans Business License.
3. Record the purpose for which the water will be used. The use will be reviewed for conformance with the guidelines. This review will be performed by the Fire Department Marshal and the Operations Superintendent or their designees.

Hydrant Information

1. Record the set and removal dates requested. We ask that the initial request be made at least 48-hours prior to the time the meter is needed. We will make every attempt to set the meter within the time period; however, we cannot guarantee this will always be accomplished.
2. Record the requested hydrant location. Not all hydrants are available for the installation of hydrant meters. The requested hydrant will be reviewed by the Fire Department Marshal and the Operations Superintendent, or their designee.
3. Explain the responsibility the customer assumes in requesting the meter:
 - a) City will install meter, secure it to the hydrant, and turn on the hydrant. Customer shall control the flow of water with the 3" valve supplied with the hydrant. Only authorized City personnel shall operate the main control valve and the hydrant. Customer is responsible for securing the valve on the outlet of the meter to avoid usage of water by unauthorized persons. ~~A chain and padlock is probably the~~

- ~~simplest method.~~—All water that passes through the meter will be billed to the customer.
- b) Customer is responsible for all damage to hydrant and meter while meter is in place.
 - c) A deposit as provided by separate fee schedule of \$500 (bond or certified check) is required before setting the meter.
4. Explain the rate and fee policies. The basic information is included within the billing information section of the request form.
 - a) During winter months when freezing temperatures are possible, the meters will be set on a day-to-day basis only and will only be set if temperatures are above freezing. In these situations, the meter will be set in the morning and picked up in the afternoon. The customer will be charged for both trips each day the meter is set and removed.
 5. Record the name and telephone number of a contact person who can be reached in case there is a problem with the hydrant which has been requested or the proposed water use.
 6. The meter number and initial reading will be recorded by the City personnel who installs the meter.

Miscellaneous

1. The City will not provide adapters for the meters. The meters will have a 2 1/2 inch National Standard Thread connection. Adapters can be obtained by the individual.
2. The number of hydrant meters is limited; therefore, meters are available on a first come first serve basis.
3. If use of a hydrant results in pressure or water quality problems, the City will promptly remove the hydrant from use and will determine an alternate hydrant location.

Department Routing

1. After the hydrant meter request form has been completed, it must be routed to the Fire ~~Marshal~~ Department and the Operations Superintendent.
2. They will review the proposed water use and the hydrant location requested and notify the Public Works Secretary of their decision. If the hydrant or use is not acceptable, the Customer Service Representative ~~Public Works Secretary~~ will contact the applicant for an alternative location. If the hydrant use is approved, the Customer Service Representative ~~Public Works Secretary~~ will deliver a copy of the request form to the Operations Division for scheduling of meter installation.

3. Personnel installing and picking up the meter will record the meter number, number of trips, the dates and the meter readings. The form will then be returned to the Public Works Secretary who will complete the billing.

CITY OF EVANS

HYDRANT METER POLICY

General: Fire hydrants are installed for the purpose of fire protection. Whenever a hydrant meter is placed on a hydrant, that hydrant is effectively out of service and the chances of causing damage to that hydrant are increased. For these reasons it is necessary to establish more clearly defined guidelines for the use of hydrant meters.

As per Section 13.04.040, of the Evans Municipal Code, all water usage must be through a meter. Therefore, all bulk water sales must be metered or must be through the City's fill station at the Operations Center.

ALL water bought through the City of Evans bulk water sales program must be used or consumed with the City of Evans. It is unlawful to transport water outside the corporate limits of the City for any purpose. Violators of this provision may lose all privileges to purchase bulk water from the City.

The City reserves the right to curtail or otherwise limit access to the bulk water sales program at any time. This may include reasons such as drought or capacity limitations.

Intent: The use of fire hydrant meters is intended for only those situations when a large volume of water is needed in a short period of time. These meters shall not be used as a temporary substitute for a permanent water service connection or a permanent irrigation tap. Examples of acceptable and non-acceptable uses are as follows:

Acceptable

Providing water for increasing moisture during earth moving
Filling swimming pools
Filling tanks on water trucks
(No chemicals allowed in tanks)

Not Acceptable

~~Masonry work~~
~~Car washes~~
~~Irrigation~~
~~Water for concrete saws~~
~~Washing streets or parking lots~~
Any use of water outside the corporate limits of Evans

Guidelines & Procedures: The following guidelines will be used for regulating the use of fire hydrant meters:

1. Requests for hydrant meters must be received a minimum of 48-hours prior to the time needed. All requests should be made by contacting the a Customer Service Representative ~~Public Works Secretary~~ at 339-5344 (ext. 103). A deposit ~~of \$500~~ (bond or certified check) is required. The applicant must sign the Hydrant Meter Request Form at the Evans Community Complex at 1100 37th Street before the meter will be set.
2. Each request will be reviewed to determine if the proposed use meets these guidelines.

The use of the water from a hydrant meter for other than the stated purpose, or misrepresentation of that use, will result in the loss of the convenience of obtaining water in this manner.

3. The City will determine on a case-by-case basis whether or not a particular hydrant is acceptable for the installation of a meter. Not all hydrants are available for use with a meter. If the requested hydrant is not available, alternate hydrants will be suggested.
4. Public Works personnel will install the meter, secure it to the hydrant, and operate the hydrant. The customer shall control the flow of water with the valve provided with the meter assembly. The customer is responsible for securing this valve to prevent the unauthorized use of water. Removal of the handle or hand wheel from the control valve is not an acceptable method of securing the valve. Only trained City employees will be authorized to operate fire hydrants.
5. During the winter months, hydrant meters will be issued only on a day-to-day basis when outside temperatures are above freezing and are expected to remain above freezing for most of the day. Meters will be installed as soon after 7:00 a.m. as practical and will be picked up at approximately 3:00 p.m. or earlier if outside temperatures drop below freezing or if requested.
6. Meters will be issued with a male 2-1/2 inch National Standard Thread connection and backflow prevention device. No hoses or adapters will be provided.
7. The customer is responsible for all rental fees and other charges. A copy of the current fee schedule is attached. These fees will include charges for all water usage.
8. The customer is responsible for any and all damages to the meter and/or fire hydrant while meter is installed. If damage occurs, an invoice will be issued to cover all repair or replacement costs, and the customer shall promptly pay the invoiced amount. The ~~\$500~~ deposit will be held until all costs are paid and may be used to offset any costs not paid within 30 days of issuance.
9. Number of hydrant meters is limited; therefore, the meters are available on a first come-first serve basis. A separate request form must be submitted for each location and/or time period requested.
10. In accordance with the City Code, it is unlawful to waste water. Every effort should be made to conserve this valuable resource. Wasteful uses will not be allowed.
11. Failure to comply with these guidelines or illegally obtaining water from or in any way tampering with fire hydrants is in violation of the City Code and upon conviction is punishable by a fine or by imprisonment.

Alternate Sources of Water

1. For building construction projects, water is available through permanent water taps at a ~~construction-billing~~construction-billing rate. This source of water is handled by the ~~Public Works Department~~, Building Division and is typically issued with a building permit.
2. Hydrant meters are typically used on large construction sites where it is impractical to haul water from any distance away. The City provides a metered water source at the Operations Center at 1958 40th Street. This metered water source provides a location for the filling of water trucks when a limited amount of water is needed or when all meters have been issued. The fee for this water is on a cost per thousand gallons basis.



This document contains the Proposed Rules Governing the Use of Colorado-Big Thompson Project Water and Windy Gap Project Water for the Development of Oil and Gas Wells as considered by the Northern Water Board of Directors at the Public Rule-Making Hearing held on December 9, 2011.

NOTE – This Rule-Making Hearing will be continued at the Northern Water Board of Directors Meeting on January 13, 2012, at approximately 10 a.m. at the offices of Northern Water, 220 Water Avenue, Berthoud, CO 80513.

NOTICE OF PUBLIC RULE-MAKING HEARING

NOTICE IS HEREBY GIVEN that the Board of Directors of the Northern Colorado Water Conservancy District (Northern Water) and the Municipal Subdistrict, Northern Colorado Water Conservancy District (Subdistrict) will conduct a public rule-making hearing on the Rules Governing the Use of Colorado-Big Thompson Project Water and Windy Gap Project Water for the Development of Oil and Gas Wells pursuant to the Board's authority under the Water Conservancy Act, C.R.S. § 37-45-101 et seq. The public rule-making hearing will be held at Northern Water's headquarters building, 220 Water Avenue, Berthoud, Colorado, on December 9, 2011, commencing at 10:00 a.m.

RULES GOVERNING THE USE OF COLORADO-BIG THOMPSON PROJECT WATER AND WINDY GAP PROJECT WATER FOR THE DEVELOPMENT OF OIL AND GAS WELLS

DEFINITIONS

C-BT Project: Colorado – Big Thompson Project.

Northern Water: Northern Colorado Water Conservancy District.

Subdistrict: Municipal Subdistrict, Northern Colorado Water Conservancy District.

Well Development Water: Water used for the development of oil and/or gas wells including, but not limited to, drilling oil and gas wells, fracking new oil and gas wells or for refracking existing oil and gas wells to improve production.

Water Hauler: Business or individual who hauls water to well drilling sites in trucks.

Water Supplier: Entity capable of delivering C-BT Project water or Windy Gap Project water to Water Haulers.

PURPOSE

The propose of these Rules is to assure that the use of C-BT Project water and Windy Gap Project water as Well Development Water complies with: a) the contract between the United States and Northern Water dated July 5, 1938; b) Colorado Revised Statutes 37-45-118(j); and, c) the terms and conditions of every allotment contract for either C-BT Project water or Windy Gap Project water, all of which require that the use of C-BT Project water and the first use of Windy Gap Project water be within the boundaries of Northern Water or the Subdistrict.

These Rules and Procedures define the actions which must be taken if Well Development Water is supplied by a Northern Water Account Entity, a C-BT Project allottee, or a Windy Gap Project allottee. These Rules and Procedures further define actions which Northern Water or the Subdistrict may take should C-BT Project water or the first use of Windy Gap Project water be beneficially used for Well Development Water outside Northern Water or Subdistrict boundaries.

APPLICABILITY

These Rules and Procedures shall apply to the use of C-BT Project water and the first use of Windy Gap Project water for Well Development Water.

These Rules and Procedures shall not apply to the reuse of Windy Gap Project water.

RULES

1. The use of C-BT Project water and the first use of Windy Gap Project water as Well Development Water for any oil or gas well located outside the boundaries of Northern Water or the Subdistrict is a violation of the contractual and statutory provisions stated above in Purpose. Therefore, the use of C-BT Project water and the first use of Windy Gap Project water as Well Development Water cannot and shall not be made for any oil or gas well located outside the boundaries of Northern Water or the Subdistrict.
2. The management, staff and counsel of Northern Water and the Subdistrict are directed and authorized to enforce the Rules and Procedures, including, but not limited to, the initiation or prosecution of appropriate legal actions.
3. A Water Supplier that delivers Well Development Water to a Water Hauler has the responsibility to assure, to document, and to certify to Northern Water and the Subdistrict, that the C-BT Project Water or Windy Gap Project water is being beneficially used within Northern Water or Subdistrict boundaries. Proper accounting is required of C-BT Project water and Windy Gap Project water delivered to Water Haulers as Well Development Water. The Water Supplier must certify that the beneficial use of C-BT Project water or Windy Gap Project water used as Well Development Water is occurring within Northern Water or Subdistrict boundaries. Incorrect or falsified information, documentation, and/or certifications provided to Northern

Water or Subdistrict management or staff under the Rules, accounting requirements, or other procedures adopted by management or staff shall be subject to criminal penalties pursuant to applicable Colorado law.

4. The management and staff of Northern Water and the Subdistrict are directed and authorized to prepare and adopt appropriate accounting requirements and other procedures for enforcement of the Rules.

5. The management and staff of Northern Water and the Subdistrict are directed and authorized to take the following corrective actions (CA) when, in their judgment, there is a violation of the Rules and Procedures or the accounting requirements or other enforcement procedures adopted by management and staff. The initial violation will result in enforcement of CA1. Second and subsequent violations will result in the enforcement of CA1, in addition to one or more of Corrective Actions CA2 through CA6.

CORRECTIVE ACTIONS FOR VIOLATIONS (CA)

CA1

1. The Water Supplier will be assessed a charge of \$500 per acre foot of C-BT Project or Windy Gap Project water delivered to a Water Hauler.
2. The Water Supplier will be required to provide a replacement water supply to Northern Water and/or the Subdistrict. Management and staff are directed and authorized to define the requirements for replacement water supply.

CA2

1. The net of water transferred into the Water Supplier's C-BT Project account at the end of the month in which the violation occurred may be deducted from the balance of the Water Supplier's account and may be returned to the general pool of C-BT Project water or Windy Gap Project water, as appropriate. If the water is returned to the C-BT Project, it shall be considered a contribution to the Regional Pool Program for the current Water Year and the subsequent Water Year.
2. Additional transfers of water into the Water Supplier's C-BT Project account and/or Windy Gap Project account for the remainder of the then current Water Year will not be permitted.

CA3

1. As of the first of the month following the discovery of a violation, the amount of C-BT Project water certified for delivery to the Water Supplier may be considered to be based on a 50% quota, regardless of the quota(s) declared by Northern Water Board of Directors and in effect on the date of the discovery of the violation. For the purpose of CA3 and the calculations to be performed under this

Corrective Action, the balance of C-BT Project water in the Water Supplier's account at the beginning of the then current Water Year may be based on a 50% quota. Further, net water transferred into the account, as of the date of the discovery of the violation, may be deducted from the beginning balance. Lastly, any water used by the Water Supplier from the beginning of the C-BT Water Year to the date of the discovery of the violation may be deducted from the Water Supplier's C-BT Project account balance. Any excess water in the Water Supplier's account in excess of the calculated balance may be deducted from the Water Supplier's account and returned to the general pool of the C-BT Project. Water returned to the C-BT Project general pool may be considered a contribution to the Regional Pool Program for the current Water Year and the subsequent Water Year.

2. Additional transfers of water into the Water Supplier's C-BT Project and/or Windy Gap Project account for the remainder of the then current Water Year may not be permitted.

CA4

1. In the two subsequent C-BT Project Water Years following the date of discovery of the violation, the C-BT Project quota used to determine the amount of water that will be certified to be delivered to the Water Supplier may be based on a 50% quota, regardless of the quotas declared by the Northern Water Board of Directors during the applicable C-BT Project Water Year.
2. The Water Supplier may not be allowed to transfer C-BT Project water into its account utilizing a CD-4 Card during the two subsequent C-BT Project Water Years following the date of discovery of the violation.
3. The Water Supplier may not be allowed to acquire the ownership of any additional acre-foot units of C-BT Project water during the two subsequent C-BT Project Water Years for any purpose, including, but not limited to, units to meet commitments to serve, units that would otherwise be transferred to the Water Supplier to meet development water requirements, or units that would otherwise be purchased by the Water Supplier.

CA5

1. Well Development Water delivered by a Water Supplier may be excluded and subtracted from historic water demand calculations used to determine C-BT Project Ownership Limitations. Well Development Water will be excluded and subtracted from water demand records beginning with C-BT Project Water Year 2002.

CA6

1. Such other measures or remedies as may be adopted by management and staff.
2. Northern Water and the Subdistrict reserve the right, at the discretion of the Board of Directors of Northern Water and/or the Subdistrict to pursue legal actions to enforce these Rules and Procedures.
3. Any allotment contract holder that is subject to corrective action imposed by management and staff of Northern Water or the Subdistrict for violation of the Rules and Procedures shall have the right to petition the Board of Directors to review the decision of management and staff. The decision of the Board of Directors regarding such petition shall be final.

Northern Colorado Water Conservancy District
Berthoud, Colorado
Dated: November 22, 2011

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December 1, 2011
December 8, 2011