

## Clay Frickey

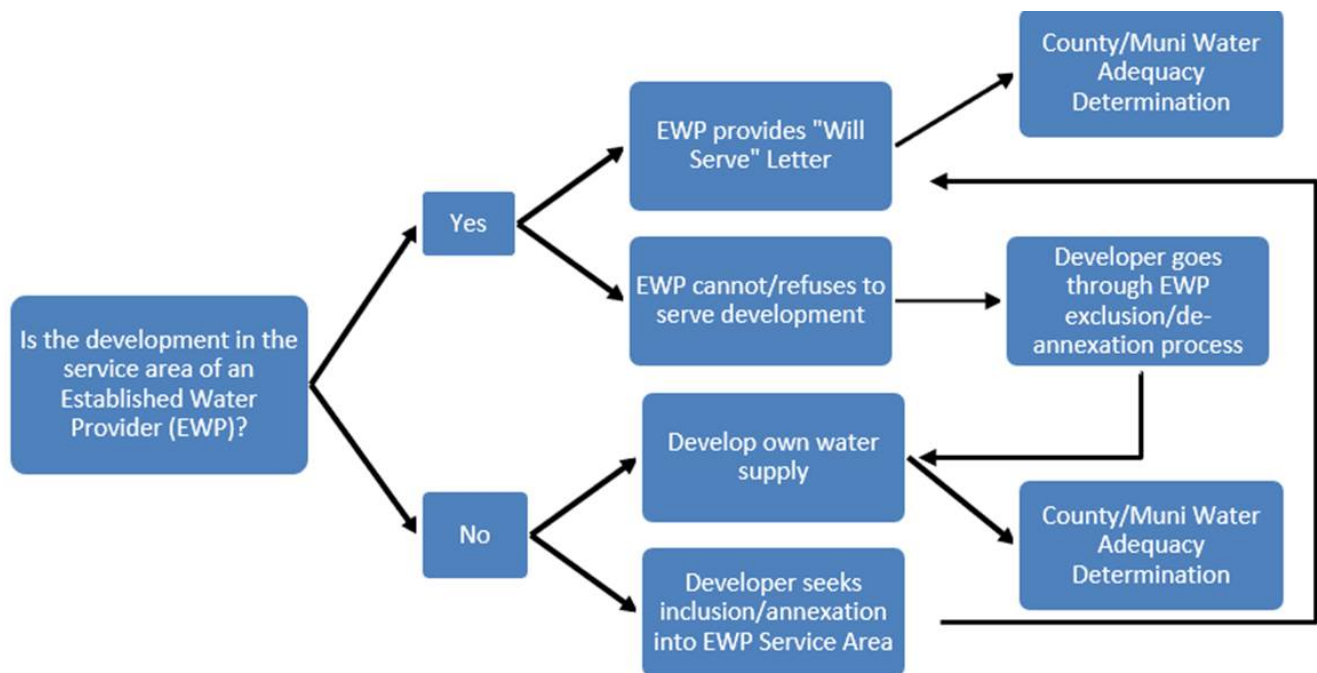
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**From:** Sandra Bratlie <SBratlie@fclwd.com>  
**Sent:** Tuesday, July 18, 2023 12:04 PM  
**To:** Clay Frickey  
**Cc:** Chris Pletcher - Contact  
**Subject:** [EXTERNAL] Water Adequacy Determination - Comments  
**Attachments:** 5\_3\_23 Redline changes.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hi Clay,

Thank you again for your time yesterday to hear our comments and concerns with the pending Water Adequacy Determination code. Below is the flow chart that illustrates our ideal workflow when development comes through the process. I've also attached a markup of existing draft code with our comments. (Side note, I noticed that your water adequacy website has an outdated draft published).




As I mentioned yesterday, we were very fortunate to provide feedback to DOLA's county template through Abbye Neel <[aneel@brendlegroup.com](mailto:aneel@brendlegroup.com)>, currently with Brendle Group. I recommend reaching out to her for their latest versions as I know that along with the County template they will be starting the municipal one shortly.

Thanks!

**Sandra Bratlie, P.E.**  
*District Engineer*



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**Please note upcoming PTO: Jul 24 through Aug 4**

**Amend Section 3.7.3, Adequate Public Facilities**

Add Subsection (G):

(G) **Water Supply Adequacy.** The determination required by Section 29-20-301, et seq., C.R.S., whether the proposed water supply for development is adequate is not addressed in this Section but is set forth in Division 3.13.

**Division 3.13 - Water Adequacy Determinations**

**Section 3.13.1 - Purpose.**

The general purpose of this Division is to establish the standards and procedures by which the adequacy of proposed water supplies for development are reviewed and determined pursuant to Section 29-20-301, et seq., C.R.S. The specific purposes are to:

- (A) Fulfill the Colorado Revised Statutes Section 29-20-303(1) requirement that the City “shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate.”;
- (B) Protect public health, safety, and welfare by ensuring that the water supplies for developments are adequate;
- (C) Ensure that growth and development in the City occur in a planned and coordinated manner;
- (D) Ensure that the City is provided with reliable information concerning the adequacy of developments’ proposed water supplies to inform the City, in the exercise of its discretion, in the approval of development applications and permits;
- (E) Promote safe, efficient, and economic use of public resources in developing and providing water; and
- (F) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, and resources.

**Section 3.13.2 - Applicability.**

This Division shall apply to all development, or redevelopment, that requires new, expanded, or increased water use, whether potable or non-potable, within the incorporated municipal boundaries of the City. No such development or redevelopment shall be approved and allowed to proceed unless the Director has determined that the proposed water supply for the development or redevelopment is adequate.

- (A) Temporary non-potable water supply systems to establish native vegetation are exempt from these requirements, if the term of use is three consecutive years or less and identified as such on an approved landscape plan.
- (B) Except as stated in Subsection 3.13.5(D), the modification of standards review set forth in Division 2.8 shall not apply to this Division 3.13.

**Section 3.13.3 Application.**

- (A) **Application Timing.** An applicant seeking a water adequacy determination shall file an application with the Director pursuant to this Division at the same time as submitting an application for final plan or basic development review, as outlined in Divisions 2.5 and 2.18, unless the application timing is altered pursuant to ~~any of~~ the following:
- (1) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable or non-potable water until submittal with a development construction permit (Division 2.6) if the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
  - (2) Upon written request at the time of application, the Director may defer the timing of an application for a water adequacy determination for potable water until submittal with a building permit (Division 2.7), if the provider is an established potable water supply entity and the Director determines such timing will not substantially interfere with or otherwise make it more difficult to determine whether the proposed water supply is adequate.
- (B) **Separate Applications.** The applicant shall file separate applications for water adequacy determinations for each portion of the development served by different water supply entities or water supply systems unless the Director determines ~~separate applications are not required that~~ a single combined application can fully describe and provide needed information and be effectively analyzed. Subsequent sections in this Division provide distinctions in the evaluation process for established potable water supply entities, other potable water supply entities, and non-potable water supply entities.
- (C) **Material Changes.** The City shall make a determination that a proposed water supply is adequate only once for each portion of a development served by a different potable or non-potable water supply entities or water supply systems during the development review process unless the water demands or supply of the portion of the development for which approval is sought are materially changed. The Director shall determine whether changes to the water demands or supply for any development or redevelopment are material and require a new water adequacy determination. The Director's determination that a material change has occurred is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (D) **Application After Director Denial.** If the Director denies an application for a water adequacy determination, the applicant may submit another application at any time, subject to applicable fees, ~~at any time~~ that addresses the stated reason or reasons for denial.

**Section 3.13.4 - Procedures and Standards for Water Adequacy Determinations: Established Potable Water Supply Entities**

- (A) **Application Requirements.**
- (1) Requests under this Section shall include a letter as described in Subsection (a), unless exempted pursuant to Subsection (b).
    - (a) A letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity ~~stating~~ that contains the following information:

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1. An estimate of the water supply requirements for the proposed development through build-out conditions;
2. A description of the established potable water supply entity's water supply system and the physical source(s) of water supply that will be used to serve the proposed development. If the proposed source(s) includes groundwater, this description must include water quality test results and results of an analysis into the potential impact on water treatment processes or the quality of delivered potable water;
3. An estimate of the amount of water yield projected from the proposed water supply system and water rights portfolio under various hydrologic conditions including long term variability and future climate risk;
- ~~4.~~ Water conservation measures, if any, that may be implemented within the proposed development;
- ~~5.4.~~ and, or water demand management measures, if any, that may be implemented to address hydrologic variations within the proposed development;
- ~~6.5.~~ Results from analyses performed demonstrating the ability for the proposed water supply to meet demands of the proposed development under various hydrologic conditions;
- ~~7.6.~~ An affidavit signed by the entity manager attesting that to the best of their knowledge the entity in compliance with all applicable regulations; and
- ~~8.7.~~ Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate; and
- ~~9.~~ Has been reviewed by All letters shall be provided to City Council for informational purposes only and is kept on file with the City's Community Development and Neighborhood Services Department; and

. At the established potable water supply entity's discretion, the letter may describe their entire service area and be submitted for a determination once and updated as required based on any material changes to any of the requirements in this Section or in their reported supply as described in Subsection 3(C). If the letter describes the entire service area, then the entity does not need to resubmit the approved letter with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

- (b) The letter described in Subsection (a) shall not be required if the established potable water supply entity has a water supply plan, or other plans that cumulatively provide the information, that:
1. Has been reviewed and updated, if appropriate, within the previous ten years by the governing board of the established potable water supply entity;
  2. Has a minimum twenty-year planning horizon;
  3. Lists the water conservation measures, if any, that may be implemented within the service area;
  4. Lists the water demand management measures, if any, that may be implemented within the development or service area;
  5. Includes a general description of the established potable water supply entity's water obligations; , such as a general description of customer demands and

The term "all applicable regulations" is too broad, FCLWD would prefer this to be specific to Colorado drinking water standards or state and federal drinking water standards.

operational water delivery obligations, such as augmentation requirements and return flow obligations;

- 6. Includes a general description of the established potable water supply entity's water supplies, supply system and water rights portfolio; and
- 7. Includes an affidavit signed by the entity manager attesting that, to the best of their knowledge, the entity is in compliance with all applicable regulations; and, Has been reviewed by City Council and is **Colorado Drinking Water Standards.**

All water supply plans, or other plans that cumulatively provide the information required above shall be provided to City Council for informational purposes only and kept on file with the City's Community Development and Neighborhood Services Department. The Director may defer providing the Council review requirement with any water supply plan or other plans until such time as the established potable water supply entity updates their existing water supply plan. Once the plan, or plans, are on file, they do not need to be resubmitted with each letter as outlined in Subsection (2) but should be referenced within the letter content in addition to what is outlined in Subsection (2).

As FYI, FCLWD "will serve" letters have the following time constraints:

- \* approved plans is LUCASS expiration (3 years from approval date) .
- \* "will serve" without approved plans (e.g. conceptual review ) is 1 year.

- (2) Requests for a water adequacy determination for all or portions of a development to be served with potable water by an established potable water supply entity shall be in a form as required by the Director. Such requests shall include a letter prepared by a registered professional engineer or by a water supply expert from the established potable water supply entity:

- (a) Identifying the portions of a development to be served with potable water by the established potable water supply entity;
- (b) Stating its ability to provide an adequate water supply for the proposed development;
- (c) Stating it is willing to commit to provide an adequate water supply for the proposed development including any conditions of the commitment; and
- (d) Providing the length of time the letter is valid for, should the proposed development not occur immediately.

- (B) **Review of Application.** The Director shall promptly review the application and associated materials concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or Building Permit application.
- (C) **Standards.** To issue a determination that a proposed water supply is adequate under this Section, the Director must find that the statements in the application and associated materials are complete, correct, and reliable.
- (D) **Decision.**
  - (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations pursuant to this Section in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;
    - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
    - (c) Deny the application finding that the proposed water supply is inadequate.
  - (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved-. The Director shall maintain a record of all



information submitted or developed upon which any water adequacy decision was based, and that record shall become part of the associated development application.

- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

### **Section 3.13.5 - Procedures and Standards for Water Adequacy Determinations: Other Potable Water Supply Entities**

- (A) **Application Requirements for Other Potable Water Supply Entities.** Applications for a water adequacy determination for all or portions of a development to be served with potable water by other potable water supply entities shall be in a form as required by the Director. Such applications shall include all of the following:
  - (1) A summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;
    - (b) A description of the established potable water supply entity's water supply system and the physical source of water supply that will be used to serve the proposed development. This should include water quality test results and proposed methods of water treatment from a registered professional engineer;
    - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition required for proposed water supply;
    - (d) An estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions;
    - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
    - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated.
  - (3) Financial documentation establishing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees that are also uniquely applicable to the proposed development to be served by the other potable water supply entity.
  - (5) Approval documentation from other regulatory agencies such as CDPHE. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. If additional approvals will be required, provide an explanation of how those approvals will be obtained, and at the Director's discretion, the additional approvals may be required as conditions of approval.

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- (6) Detailed information on any proposed water treatment processes as well as how any waste products created from the treatment process will be properly disposed of.
- (7) Such other information as may be required by the Director in order to determine whether the proposed water supply will be adequate.
- (8) An other potable water supply entity with an approved ODP or PUD Overlay as outlined in Division 2.3 and Division 2.15 that includes the entire proposed service area, may at either the other potable water supply entity's, or Director's discretion, submit an application that describes their entire proposed service area once with the initial phase of development and then update the initial determination with a letter from a professional engineer for each subsequent phase with the information required in Section 3.13.4.(A) (2); or as required based on any material changes to:
  - (a) Any of the requirements set forth in this Section;
  - (b) The reported water supply as set forth in Section 3(C); or
  - (c) The proposed development, as determined by the Director.

**(B) Review of Application.**

- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.

**(2) Review.**

- (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The time needed for the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
- (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required to review and ensure compliance with all review criteria.
- (c) The review will be completed concurrently with the required Final Plan, Basic Development Review, Development Construction Permit, or any plan amendments as specified in Section 3.

**(C) Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:

- (1) The quality of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Providing potable water to the development of a quality that meets or exceeds all state and federal water quality standards;
  - (b) Providing potable water to the development of a quality equal to or better than the quality of potable water provided by the City of Fort Collins as measured by appropriate water quality aspects; and
  - (c) Establishing and maintaining a water supply entity that has the technical expertise and resources to maintain the quality of the water supply for the lifetime of the development.



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- (2) The quantity of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Relying upon a renewable and/or sustainable physical supply of water, that takes into account any impacts if multiple users have rights to use water from a single source, such as an aquifer;
  - (b) Having ability to acquire ~~the~~ water rights ~~or water contracts~~ portfolio that ~~provide~~ provides a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable transit and other losses and all applicable obligations, including augmentation requirements and return flow obligations; and
- (3) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand in all hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration reasonable losses and all applicable obligations, including augmentation requirements and return flow obligations for the lifetime of the development.
- (4) The dependability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing that the water supply system includes sufficient redundancy equal to or better than the redundancy of the City of Fort Collins system;
  - (b) If the water supply system includes a water treatment facility, demonstrate how the facility operators will ensure they have the technical expertise and resources to operate the treatment facility dependably and sustainably in a manner that is economical, safe, and that does not produce any harmful by-products;
  - (c) Establishing that the water supply system and water rights portfolio can operate during water supply shortages and emergencies, including infrastructure issues, natural disasters, and long-term climate change; and
  - (d) Establishing and maintaining a water supply entity that can oversee and maintain the water supply system and water rights portfolio for the lifetime of the development.
- (5) The availability of the proposed potable water supply will be sufficient for build-out of the proposed development by:
  - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed water supply system;
  - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development; and
  - (c) For lands within the water service area of an established potable water supply entity, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.

FCLWD strongly supports this requirement. This ensures that growth and development in the City occur in a planned and coordinated manner, and promotes the safe, efficient, and economic use of public resources, both goals of this code. Pop up private water companies do not have the economy of scale to provide the same level of service as established providers. While short term they may realize cost savings, the savings are negated when considering infrastructure redundancy and resiliency over the long term. FCLWD has been planning for service in our area for decades. We structure rates, obtain water resources, and develop infrastructure for planned growth based on the jurisdictional land use code.

- (D) **Modification of Standards.** If a potable water supply entity cannot meet the ~~Fort Collins Utility~~ standards set forth above in Subsection 3.13.5(C), with the exception of 3.13.5(C)(5)(c) which shall not be subject to modification, then they may seek a modification of standards pursuant to Division 2.8 with the Director as the designated decision maker. In addition to the four standards set forth in Section 2.8.2(H) for granting a modification, the Director may also grant a modification if such modification would not be detrimental to the public good and the standard as modified is comparable to an existing standard already being employed by another established potable water supply entity. The Director's decision regarding a requested modification of standards is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
- (E) **Decision.**
- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;
    - (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
    - (c) Deny the application finding that the proposed water supply is inadequate.
  - (2) All water adequacy determinations shall become part of the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information submitted or developed upon which the water adequacy determination was based for the proposed water supply and proposed water supply system, and that record shall become part of the associated development application.
  - (3) The Director may impose conditions of approval that when met,- as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system; and/or the applicant completing construction of all infrastructure for the water supply system. No building permit may be issued until all conditions have been met.
  - (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.
  - (5) The Director shall require a disclosure, recorded by the Larimer County Clerk, to be provided at the time of all property sales or transfers that the water supply for the development is being provided by the approved entity.

### **Section 3.13.6 - Procedures and Standards for Water Adequacy Determinations: Non-Potable Water Supply Entities**

- (A) **Application Requirements for Non-Potable Water Supplies.** Applications for a water adequacy determination for all or portions of a development to be served with ~~untreated~~ non-potable water shall include all of the following:
- (1) Summary document linking the information to the standard of review.
  - (2) Report including information required under Section 29-20-304(1), C.R.S.:
    - (a) An estimate of the water supply requirements for the proposed development through build-out conditions;

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- (b) A description of the water supply system and physical source of water supply that will be used to serve the proposed development. This description must include water quality test results and results of an analysis investigating any limitations of use due to poor quality;
  - (c) A description of all elements of the water rights portfolio either owned or planned for acquisition-, contracts, and/or IGAs required for the proposed water supply;
  - (d) An estimate of the amount of water yield projected from each proposed water supply source under various hydrologic conditions. For surface water sources, this should include results of an analysis of historical temporal availability of the proposed supplies throughout the year, annual volumetric yield, and the frequency and flow rate of deliveries. For groundwater sources, this should include descriptions of the decreed place of use, flow rate, and annual volumetric limits, and their temporal availability of the proposed supplies throughout the year based on augmentation requirements;
  - (e) Water demand management measures, if any, that may be implemented within the development to account for hydrologic variability; and
  - (f) Description of all water conservation measures to be applied in the development and how they would be enforced and effectuated. At a minimum, smart controllers and flow meters are required per the Land Use Code.
- (3) Financial documentation showing that the proposed provider is able to create the proposed water supply system and maintain it in perpetuity.
  - (4) A narrative describing how the entity plans to ensure compliance equal to or better than City water conservation requirements including those outlined in Division 3.2.
  - (5) Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system. At the Director's discretion, this information may substitute in whole or in part for the application requirements set forth in this Section.
  - (6) Such other information as may be required by the Director.
- (B) **Review of Application.**
- (1) **Agreement on Costs.** Prior to the City reviewing any application under this Section, the applicant shall agree in writing to reimburse the City for all costs associated with reviewing the application and associated materials, including costs associated with consultants hired to assist the Director's review. No water adequacy determination shall be issued unless and until all such costs have been paid to the City. The fee assessed by the City shall not exceed the cost of the review and administration of the review process.
  - (2) **Review.**
    - (a) The Director shall review the materials provided by the applicant following the completion of the agreement identified in the previous Subsection. The length of the Director's review shall be based on the complexity of the application, the proposed water supply, and proposed water supply system.
    - (b) Following the submission of the application, the Director shall be entitled to require any such additional or supplemental information from the applicant as may be required for the Director's review.

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- (c) Applications for water adequacy determinations for Non-potable systems shall be submitted at the same time as Development Construction Permit for review.
- (C) **Standards.** To issue a water adequacy determination under this Section, the Director must find that the application and associated materials establish that:
- (1) The quality of the proposed non-potable water supply will be sufficient for build-out of the proposed development by providing non-potable water to the development of a quality sufficient to meet all planned landscape needs and other intended non-potable water uses shown in the approved landscape or utility plans;
  - (2) The quantity of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - (a) Relying upon a renewable and/or sustainable physical supply of water;
    - (b) Having a water rights or water contracts portfolio that provide/provides a permanent firm yield equal to or greater than the maximum daily water requirement (accounting for typical conveyance and irrigation and other inefficiencies) under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations; and
    - (c) For lands to be served by tributary groundwater, establishing that the plan for augmentation will operate to provide a permanent firm yield equal to or greater than the maximum assumed demand under various hydrological conditions, including a modeled one-in-fifty year drought, when taking into consideration all applicable obligations, including augmentation requirements and return flow obligations.
  - (3) The dependability of the proposed non-potable water supply will be sufficient for build-out of the proposed development by:
    - (a) If the non-potable water supply system includes treatment, establishing that the treatment can and will operate sustainably in a manner that is economical, safe, and that does not produce any harmful by-products; and
    - (b) Establishing and maintaining a water supply entity that has the technical expertise and resources to oversee and maintain the non-potable water supply system.
  - (4) The availability of the proposed water supply will be sufficient for build-out of the proposed development by:
    - (a) Establishing the applicant has, or has the ability to acquire, the necessary property rights and resources to build and operate the proposed non-potable water supply system; and
    - (b) For lands to be served by tributary groundwater, establishing that the proposed use of the tributary groundwater is sustainable with evidence of assured supply for the lifetime of the development.
- (D) **Decision.**
- (1) Based upon the information provided by the applicant and developed by the City and any consultants, the Director shall issue all water adequacy determinations in writing including specific findings and shall either:
    - (a) Approve the application finding that the proposed water supply is adequate;

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- (b) Approve the application with conditions finding the proposed water supply is adequate provided the conditions are met; or
  - (c) Deny the application finding that the proposed water supply is inadequate.
- (2) The written determination shall be included in the plan set for the associated development application, if approved. The Director shall maintain a record of all non-privileged information developed to review the proposed water supply and proposed water supply system and that record shall become part of the associated development application.
- (3) The Director may impose conditions of approval that when met, as determined by the Director, will bring the proposed water supply into compliance with all applicable standards set forth in this Section, including conditions that the applicant acquire the required water right decrees and water contracts for the water supply system. No building permit may be issued until all conditions have been met.
- (4) The Director's decision is not subject to appeal pursuant to the Land Use Code or Code of the City of Fort Collins.

**Water Adequacy Determination Definitions to Place in LUC Art. 5**

*Adequate* shall mean a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water for the lifetime of the type of development proposed and may include reasonable conservation measures and water demand management measures to account for hydrologic variability.

*Established potable water supply entities* shall mean the City of Fort Collins, the East Larimer County Water District, the Fort Collins-Loveland Water District, the Sunset Water District, and the West Fort Collins Water District.

*Non-potable water* shall mean water that has not been treated to state and federal standards safe for human consumption, but can be placed to beneficial uses, including irrigation, dust suppression, toilet and urinal flushing, or make-up water for mechanical equipment.

*Non-potable water supply entities* shall mean the water supply entities, either established potable water supply entities or other water supply entities that provide water that does not meet the state and federal standards for human consumption to developments for the beneficial uses of non-potable water.

*Other potable water supply entities* shall mean the water supply entities other than the established potable water supply entities that provide potable water service, including new proposed water supplies.

*Potable water* shall mean water, also known as drinking water, that is treated to levels which meet state and federal standards for human consumption.

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*Water adequacy determination* shall mean a determination whether the proposed water supply for a development is adequate.

*Water supply entity* shall mean a municipality, county, special district, water conservancy district, water conservation district, water authority, or other public or private water supply entity that, ~~at the time of the application, or within three years of application,~~ supplies, distributes, or otherwise provides water at retail.

*Water rights portfolio* shall mean all rights to water, including water rights, contracts, and agreements associated with water supplies that are used to meet demands. A water rights portfolio that includes non-renewable or non-perpetual water supplies does not mean that the entire portfolio is not renewable and/or sustainable.

*Water supply system* shall mean all infrastructure planned or used to divert and deliver water to a development.

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## Clay Frickey

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**From:** max moss <max@montava.com>  
**Sent:** Monday, July 3, 2023 11:26 AM  
**To:** Clay Frickey  
**Subject:** [EXTERNAL] WAD  
**Attachments:** Revised Water Adequacy Presentation -- 7-3-2023 copy.docx

Clay,

For our call later today please see this that we put together with Steve.

Our first opinion is the city has all they currently need to make the decisions in front of them without a 12 page addition to the code.

Our second position is if you really really want to add something, the small addition we suggested in #2 completely covers you.

Although we really really don't think you need to do this 12 page document that adds all kinds of pain to the process for everyone, the remaining issues of concern are listed.

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## WATER ADEQUACY

New water adequacy code provisions is overly complicated and probably not necessary.

1. The City already has broad authority to ensure the “acquisition of sufficient water rights as the City grows and develops” and to ensure the “safe and efficient delivery of water to City residents and other water users.” Ch. 26, Article III, § 26-42.

- That can be construed as allowing the City to ensure sufficient water rights exist for all new development within the City.

2. But if the City wants a code provision that applies more specifically to the Montava situation, where the City is not currently planning on extending service and where the property is located in an existing district – the City already has a code provision directly on point that could be modified by a sentence or two:

If a property located within the City is in an area not supplied with both water and wastewater service from the City but is capable of receiving both water and wastewater service from the one (1) or more duly established quasi-municipal utility service districts, then the City shall not extend or provide either service to the property. The City may, however, extend either or both services to such property if the utility service district **is or** becomes incapable of providing a reasonable level of service to the property **for the proposed development. If a developer proposes alternative water supplies (potable and/or non-potable) for such property that do not rely upon the existing district, the City through its Utilities Executive Director shall review the adequacy of such water supplies consistent with C.R.S. § 29-20-301, et. seq., based upon all available relevant information, and either approve it, approve it subject to conditions, or deny it.** Upon the review of the Water Board and the City administration, the City Council may waive any part or all of this Section. Ch. 26, Article I § 26-4

- This would expressly authorize the water adequacy review but allow flexibility to consider all available information.

3. If the City still wants the separate 12-page addition to its code to examine water adequacy – we have several comments that we would like you to consider:

A. In the Procedures and Standards for Water Adequacy Determination for Other Potable Water Supply Entities, we have two suggested changes:

3.13.5(A)(4) “A fee assessment describing the proposed water rates and fees for the new system and how those fees compare with those charged by the established potable water supply entities. This assessment should include consideration of any metro district, HOA, or other taxes or fees

to the extent that are also uniquely applicable to providing the proposed water service development to be served by the other potable water supply entity.”

- An HOA or metro district may exist regardless of who supplies water. Since the purpose of this provision is to assess and compare the true costs of the water service being provided by other potable water supply entities, this provision should apply only to HOAs or metro districts to the extent uniquely applicable to the water service that will be provided. The City should compare apples to apples.

3.13.5(C)(5)(c): “For lands within the water service area of an established potable water supply entity, **and if required by Colorado law**, establishing that the lands to be served by the other potable water supply entities have been removed from the water service area of the established potable water supply entity; or the established potable water supply entity consents to the proposed service by the other potable water supply entity. The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.”

- As currently written, if an existing district will not consent to the proposed service and will not exclude the land, then that existing district will control development within the City by controlling the water supply for that development. That should only occur where it is required by Colorado law. As written, the code would give existing districts that legal authority where they wouldn’t otherwise have it.

B. In the Procedures and Standards for Water Adequacy Determinations for Non-Potable Supply Entities, we have one suggested change:

3.13.6(A)(5): “Approval documentation from other regulatory agencies, including the established potable water supply entity whose service area contains the proposed non-potable system **if such approval is required by Colorado law**. At the Director’s discretion, this information may substitute in whole or in part for the application requirements set forth in this Section. **The Director may, however, waive this requirement if an established potable water supply entity is incapable of providing a reasonable level of service to the proposed development.**”

- These changes (1) ensure approval by the existing district is only required by the City when required by law; and (2) retains the City’s existing authority under the code to assess the reasonableness of the established district’s service and is identical to the last sentence already in 3.13.5(C)(5)(c).