

Council Agenda Summary

December 6, 2022

Key Staff Contact: Sean Chambers, Water & Sewer Director, 970-350-9815

Title:

Introduction and first reading of an Ordinance for the sixth amendment to the development agreement for Leprino Foods Company

Summary:

In 2008, the City and Leprino entered into a Development Agreement for Leprino's construction of a dairy product manufacturing facility in Greeley. The Development Agreement required the City to provide Leprino with treated water service for all three planned phases of its development, which was then estimated at 1,344 acre feet per year at buildout. To meet Greeley's raw water requirements for the facility, the Development Agreement granted Leprino certain raw water credits (including a 600 acre feet credit for "Produced Water" generated from milk as a byproduct during processing at the facility), and allowed Leprino to pay cash-in-lieu of providing raw water at a favorable rate.

As Leprino began operations and was constructing the three phases of its facility, it was apparent that the facility's original estimated demand of 1,344 acre feet per year was low. Through 2016, Leprino had purchased 1,133 acre feet of cash-in-lieu water, which reflected the entirety of the favorably priced cash-in-lieu (Leprino Water Bank Rate) as defined in the original Development Agreement. In March 2017, Greeley City Council approved the Fourth Amendment of the Development Agreement for Leprino. The Fourth Amendment made changes to the Development Agreement that made available to Leprino additional raw water at discounted cash-in-lieu rates, but also required Leprino to match each acre foot of discounted cash-in-lieu water with a dedication of Colorado-Big Thompson (C-BT) water. After the dedication of C-BT, Leprino has the option to purchase 55 acre feet of water at the original Leprino Water Bank Rate (\$4,500/acre foot, increasing 4% annually starting in 2015) and up to 150 acre feet of water at the New Leprino Water Bank Rate (\$12,000, increasing 4% annually starting in 2018). Since the adoption of the Fourth Amendment, Leprino had dedicated 247 units of C-BT water, reflecting 190 acre feet of water, but has not purchased any of the additional discounted cash-in-lieu water. After the dedication of 190 acre feet of C-BT, Leprino's total raw water allotment is 2,134 acre feet.

The original Development Agreement envisioned the Leprino facility would be built out by 2018 and that after 2018 any water usage by Leprino over the raw water allotment would be subject to a raw water surcharge. This provision was unchanged in the subsequent amendments to the Development Agreement. In 2020, Leprino used 2,306.53 acre feet of water, exceeding their allotment by 172.53 acre feet. At the 2020 raw water surcharge rate of \$10.05 per thousand gallons, this overage resulted in a total raw water surcharge of \$565,001.68 due to Greeley from Leprino.

At the time the Fourth Amendment to the Development Agreement was developed and approved, the exact amount of decreed Produced Water was unknown. (Greeley and Leprino received the decree for the Produced Water on April 17, 2020.) The Fourth Amendment defined the option for Greeley to purchase the excess water above 600 acre feet of Produced Water (called Excess Decreed Amount) and the purchase price for Greeley would be the New Leprino Water Bank Rate (escalated at 4%). The Produced Water volume was approximately 840 acre feet of water, or 240 acre feet above the 600 acre feet of raw water credit given to Leprino. Although Greeley declined to purchase any of this additional water, staff agreed to allow Leprino to satisfy their raw water surcharge liability with a portion of the Excess Decreed Amount supplies rather than pay the surcharge with cash. The enclosed Sixth Amendment to the Development Agreement reflects Greeley purchasing 38.70 acre feet of Excess Decreed Amount water, which reflects the volume of water the raw water surcharge of \$565,001.68 can purchase using the 2022 New Leprino Water Bank Rate of \$14,599.83/acre foot.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	Yes
If yes, what is the initial, or, onetime impact?	\$565,001,68
What is the annual impact?	None
What fund of the City will provide Funding?	Water Acquisition Fund
What is the source of revenue within the fund?	Cash-in-Lieu
Is there grant funding for this item?	No
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	Greeley is using revenue owed from Leprino to pay for an additional water supply

Legal Issues:

Consideration of this matter is a legislative process.

Decision Options:

- 1) Introduce the ordinance as presented; or
- 2) Amend the ordinance and introduce as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to introduce the ordinance and schedule the public hearing and final reading for January 3, 2023.

Attachments:

Ordinance

6th Amendment – Leprino Foods Development Agreement

PowerPoint