

Water & Sewer Agenda Summary

Date: October 19, 2022

Key Staff Contact: Erik Dial, Utility Finance and Business Manager

Title:

Approve and Recommend to City Council the Leprino Development Agreement – 6th Amendment

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 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, after negotiations between Greeley staff and Leprino, Greeley's Water and Sewer Board and 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 the then current 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/kgal, 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 Water Court application for the Produced Water was in process and the decreed volume of water from the application was unknown. (Greeley and Leprino received the decree for the Produced Water on April 17, 2020.) The Fourth Amendment defined the options for

Greeley and Leprino if the decreed volume resulted in a volume less than or greater than 600 acre feet of Produced Water. If the decreed volume resulted in a volume greater than 600 acre feet of Produced Water (based on the 36 month average after the completion of the third phase of the facility construction), then Greeley would have the option to purchase any or all of the "Excess Decreed Amount" of Produced Water. The purchase price for Greeley for the Excess Decreed Amount would be at the New Leprino Water Bank Rate (escalated at 4%) and Greeley had 120 days to notify Leprino of its intent to purchase any of the Excess Decreed Amount when the 36 month period was complete. Leprino notified Greeley that March 30, 2022 was the end of 36 month period and Greeley had 120 days from then to purchase the Excess Decreed Amount, if so desired. The Produced Water volume during that 36 month period was approximately 840 acre feet of water, or 240 acre feet above the 600 acre feet of raw water credit given to Leprino. Greeley's staff notified Leprino that the City would not purchase any of the Excess Decreed Amount because there are other, less expensive supplies that can be purchased for the purposes that the Produced Water would serve for Greeley. Leprino, however, was interested in a non-cash transaction to pay for their 2020 raw water surcharge. Leprino suggested that they satisfy their raw water surcharge liability with a portion of the Excess Decreed Amount supplies. Greeley's staff was amenable to that solution and 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.

Recommended Action:

Approve and Recommend to City Council the Sixth Amendment to the Leprino Development Agreement.

Recommended Motion:

"I move that the Board approve the Sixth Amendment to the Leprino Development Agreement and recommend that City Council approve the same."

Attachments:

Sixth Amendment to the Development Agreement
Power Point slide deck