

Water & Sewer Agenda Summary

Date: May 18, 2022

Key Staff Contact: Adam Jokerst

Title: Approve 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.

Summary: 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 enclosed Excess Capacity Carriage Agreement ("Carriage Agreement"), in exchange for withdrawing from the lawsuit.

Key terms Carriage Agreement are:

- Greeley has senior rights to excess capacity in the ditch, up to 13.8 cfs.
- The term of the agreement is 30 years but may be extended another 20 years past when Greeley begins using excess capacity. The agreement may be extended another 20-years 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.

Recommended Action: 1) Approve the Excess Capacity Carriage Agreement with the Taylor & Gill Ditch Company and 2) approve the Stipulation and Settlement Agreement with the Taylor & Gill Ditch Company, William and Paulette Seaworth, and HF2M, Inc.

Recommended motion:

"I move 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."

Attachments: Presentation, Settlement Agreement, and Carriage Agreement