

Attachment #3.

TO: STEAMBOAT SPRINGS CITY COUNCIL
FROM: KELLY ROMERO-HEANEY; WATER RESOURCES MANAGER, CITY OF STEAMBOAT SPRINGS
SUBJECT: WATER RIGHTS DEDICATION POLICY AND FEE IN LIEU FOR COMPARABLE COMMUNITIES
DATE: FEBRUARY 7TH, 2017
CC: JON SNYDER, WATER & SEWER MANAGER AND INTERIM PUBLIC WORKS DIRECTOR, CITY OF STEAMBOAT SPRINGS; JENNIFER BOCK, STAFF ATTORNEY, CITY OF STEAMBOAT SPRINGS

In anticipation of the Brynn Grey proposal to develop the West Steamboat Neighborhood (WSN), this memo provides a summary of the city's Water Rights Dedication Policy, the anticipated water use for the WSN vs. the West Steamboat Springs Area (WSSA), and a comparison of the water rights dedication policies and fees in lieu assessments for other mountain communities.

The Water Rights Dedication Policy for the City of Steamboat Springs

The City's Water Rights Dedication Policy at RMC Sec. 25-77 is attached to this memo for reference. The following includes excerpts from the key elements from the policy:

“The purpose of this water rights dedication policy is to ensure that water service required for new development does not interfere with service to existing customers and does not interfere with the city's ability to meet reasonably anticipated future water supply needs. The policy is intended to ensure that all new development bears an appropriate share of the expense that may be required to provide reliable water service to the new development, as well as an appropriate share of the investment that current and past residents of the city have made in developing a dependable water supply. For the foregoing reasons, and to promote the general welfare of the city and the public, the city adopts a general policy of conditioning new treated or raw water service from the city's municipal water system upon either a dedication of water rights or a payment of cash in lieu of water rights by the development to be served.”

Water Rights Dedication:

- 1) All appurtenant water (water historically used on the property) associated with the property must be dedicated to the city.
- 2) Where there is no appurtenant water on the property, or where the appurtenant water will not provide a dependable legal supply equal to 110% of the estimated water requirement, the applicant shall dedicate sufficient alternative water rights that can be folded into the city system without unreasonable expense or delay. Preference shall be given to water rights senior in priority to 1922 provided that the dedication of such rights shall not directly result in the permanent dry-up of historically irrigated acreage. The city may accept alternative water rights including, but not limited to:
 - a. Storage upstream from the Elk River Diversion;
 - b. Senior Historic Consumptive Use Credits that can be changed for direct use at any of the city's points of diversion;
 - c. Stagecoach Reservoir water rights, and/or other storage rights upstream from the City infiltration galleries;

- d. Such other alternative water rights that city staff, in consultation with the city's retained water experts, determine will meet the one hundred ten (110) percent dependable legal supply requirement and enhance the firm yield of the city's water supply.
- 3) Cash in lieu of water rights. City council may, at its discretion, allow an applicant to provide a cash payment in lieu, or other valuable consideration, the sufficiency of which shall be calculated according to what it would cost the city to acquire one hundred ten (110) percent of the water requirement for the proposed development. City council discretion to accept cash in lieu or other valuable consideration under this section is subject to the following conditions:
- a. The city must have sufficient water rights to meet the estimated water service requirement for the property to be served;
 - b. Any cash in lieu or other alternative arrangement shall be documented in a contemporaneous written agreement;
 - c. Cash payments received by the city under this subsection (f) shall be used to address the city's most pressing water supply needs.
 - d. The City may substitute or waive any of the conditions or requirements of the policy, so long as such a waiver or substitution is consistent with and furthers the purpose of the policy. Council may also waive up front dedications or cash in lieu in favor of phased dedications or payments as the development moves forward.

Water Rights Dedication Policies & Fee in Lieu for other West Slope Communities

City Staff researched and summarized water rights dedication policies for several mountain communities to demonstrate the scale of investment typically expected of developments similar to the WSN. With that said, water markets in other basins can vary significantly and the cost of water in the Eagle Valley, for example, is not the same as the cost of water in the Yampa Valley. Note that any of the Water Rights Dedication Policies listed below can be made available to City Council for further review.

Eagle River Water & Sanitation District (ERWSD)/Upper Eagle River Water Authority (UERWA):

The policies for ERWSD & UERWA segregate their fee in lieu by cost per consumptive acre foot of water for the summer months (May through August) and the non-summer months (September through April). Note that a “consumptive acre foot” refers to an acre foot of water that is fully consumed and not lost to the river through infiltration of outdoor irrigation nor is it discharged to the river at a wastewater treatment facility. ERWSD utilizes a Water Demand Worksheet to determine total consumptive use, but an applicant can negotiate their total demand based upon certain water conservation metrics. The associated fees in lieu are as follows:

Summer Months = \$8, 700 per consumptive acre foot of water

Non-Summer Months = \$31,500 per consumptive acre foot of water

Snake River Water District (Keystone):

The Snake River Water District requires that 120% of the water rights necessary for the new development or redevelopment of property outside of the District’s service boundary be dedicated to the district. Alternatively, an applicant shall pay the current market value of firm annual yield of in-basin storage, but shall not be less than \$40,000 per consumptive acre-foot of water.

Town of Gypsum:

The Town of Gypsum maintains the right to reject the dedication of water rights that it deems to not have sufficient legal priority or yield or are not transferable to the town's municipal points of diversion. Alternatively, an applicant will pay the fee in lieu of \$7,000 per equivalent residential unit (EQR). Per said fee, 20% is due at time of annexation with the remaining balance due prior to recording the final plat.

Town of Carbondale:

The Town of Carbondale requires the dedication of 0.75 acre feet of Historic Consumptive Use Credits per EQR. The dedication of water rights or fee in lieu must occur at Preliminary Plan Approval. Absent a written agreement between the Town and the applicant, water and sewer will not be extended to the proposed development until either the water rights are dedicated or the fee in lieu has been satisfied. The fee in lieu schedule is as follows:

\$3,000 per acre foot; \$2,000 per acre foot due at annexation.

Town of Breckenridge

The Town of Breckenridge requires that all appurtenant water be dedicated to the water utility upon annexation. The Town subsidized the Wellington Neighborhood by waiving many fees, including water/tap fees and by varying many of their engineering/development standards. The Town had sufficient water supplies at the time of development approval 15-years ago, but they are reaching their max capacity. Breckenridge recently raised water/sewer rates by 5% to accommodate the growing water demand through a 6MGD water treatment plant that was estimated at \$25 million. But recent estimates suggest that the plant will cost \$48 million to construct and the project has been put on hold.

Estimated Water Demands for Proposed West Steamboat Neighborhoods

The Water Demand Report for the West Steamboat Neighborhoods (Resource Engineering, Inc. January 27th, 2017) outlined the following demands:

Total EQR's: 435.5 (400 single family/multitplex homes & 50 apartments)

- 1) In-house use/year (total diverted acre foot) = 136.7
- 2) Irrigation use/year (total diverted acre foot) = 67.2
- 3) Total use/year (total diverted acre foot) = 203.8
- 4) Total acre foot/year consumed May-Aug = 52*
- 5) Total acre foot/year consumed Sept – April = 11.9*
- 6) Total acre foot/year consumed = 63.9 (assuming Yampa River or Fish Creek is the source; Elk River source = 203.8) *

*Total acre foot/year consumed assumes that 5% of indoor use is fully consumed and not discharged back to the river at the wastewater treatment facility while 85% of outdoor use is fully consumed by landscape irrigation with only 15% returning to the river.

Estimated Water Demands for Full Build-Out of the WSSA

The Steamboat Water Supply Master Plan (Stantec, November 2009) and the Steamboat Water and Wastewater Master Plan Updates (McLaughlin Water Engineers, LTD., December 2009) outlined the following demands:

Total EQR's: approximately 4000

- 1) In-house use/year (total diverted acre foot) = 1254
- 2) Irrigation use/year (total diverted acre foot) = 617
- 3) Total use/year (total diverted acre foot) = 1871
- 4) Total acre foot/year consumed May-Aug = 480*
- 5) Total acre foot/year consumed Sept – April = 100*
- 6) Total acre foot/year consumed = 580*

*Total acre foot/year consumed assumes that 5% of indoor use is fully consumed and not discharged back to the river at the wastewater treatment facility while 85% of outdoor use is fully consumed by landscape irrigation with only 15% returning to the river.

WSN & WSSA Demands and West Slope Communities Fee In Lieu Comparisons

| Water District | \$/AF (Summer) | \$/AF (Winter) | \$/AF Total | \$/EQR | \$ WSN (served by Yampa or Fish Creek) | \$ WSN (served by Elk River) | \$ WSSA | Notes |
|----------------------|----------------|----------------|-------------|------------|--|------------------------------|-----------------|--|
| ERWSD/UERWA | \$8,700.00 | \$31,500.00 | N/A | N/A | \$827,250.00 | \$4,441,767.00 | \$8,039,460.00 | |
| Snake River | N/A | N/A | \$40,000.00 | | \$2,811,600.00 | \$8,967,200.00 | \$25,520,000.00 | |
| Town of Gypsum | N/A | N/A | N/A | \$7,000.00 | \$3,048,500.00 | \$3,048,500.00 | \$28,000,000.00 | 20% of fee due upon annexation.; remainder due at Final Plat |
| Town of Carbondale | N/A | N/A | \$3,000.00 | | \$1,077,780.00 | \$1,077,450.00 | \$9,900,000.00 | \$2,000 due at annexation |
| Town of Breckenridge | N/A | N/A | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | Breckenridge did not charge Brynn Grey a Fee In-Lieu |

The Cost of Water in the Yampa Basin

Water supplies in the Yampa Basin are relatively undeveloped and a well-established water market does not exist here as it does in the communities listed above. Future drought and development will likely contribute to the scarcity and demand for water in a way that generates a more expensive water market. But at the present time, the limited availability of storage in the Yampa Basin makes it difficult to deliver water at the time and to the place that it is needed, thus driving up the cost of water in locations that cannot be supplied with Stagecoach Reservoir water (i.e. the majority of the WSSA.) The fee in lieu calculation for the City's Water Rights Dedication Policy should be developed by factoring in the cost to serve and the availability of direct flow or storage rights for a given development.

The following present-day known examples for the price of water are provided below for context:

Stagecoach Reservoir: The City's current contract price for Stagecoach Reservoir water is \$35 per acre foot per year, though the price is likely to rise when contracts are up for re-negotiation in 2019. The City currently spends \$19,320/year on a contract for 552AF. It's important to note that Stagecoach water cannot be exchanged up to the Fish Creek Filtration Plant nor can it augment diversion on the Elk River. Therefore, it can only be delivered to the City's Yampa Wells unless another Yampa Treatment Plant is constructed at a location that can physically supply the WSSA.

Fish Creek Reservoir: The Fish Creek Reservoir Expansion in 1996 cost approximately \$10,000 per acre foot. The WSN Water Demand proposes to serve the WSN from the Fish Creek Filtration Plant.