

**AGENDA**

**Tuesday, June 18, 2024**

**1:00 p.m.**

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 719-733-3651,985655081#](tel:+17197333651,985655081#)

<b>1:00 p.m.</b>	<b>1. Call to Order</b>	Chair Donelson
<b>1:02 p.m.</b>	<b>2. Invocation and Pledge of Allegiance</b> <ul style="list-style-type: none"> <li>• Jeff Hanson, Energy Infrastructure Planning Engineer</li> </ul>	Chair Donelson
<b>1:05 p.m.</b>	<b>3. Consent Calendar</b> These items will be acted upon as a whole unless a specific item is called for discussion by a Board Member or a citizen wishing to address the Utilities Board. (Any items called up for separate consideration shall be acted upon following Compliance Reports.)  <b>3a. Approval of Utilities Board Meeting Minutes: May 22, 2024</b>	Chair Donelson
<b>1:10 p.m.</b>	<b>4. Customer Comments</b> <ul style="list-style-type: none"> <li>• During the customer comment period, comments are accepted for any topic not on the agenda.</li> <li>• Comments for specific agenda items will be taken following the presentation of the item and the Board's discussion.</li> <li>• Comments will be limited to three minutes per speaker, per item.</li> <li>• Following the comments from customers that have signed up to speak, an announcement will be made seeking additional comments and the Board will accept all those wishing to comment.</li> </ul>	Chair Donelson
<b>1:15 p.m.</b>	<b>5. Recognition</b> <ul style="list-style-type: none"> <li>• Eaton Downtown Conference</li> <li>• Expanding Customer Excellence Award</li> </ul>	Abigail Ortega, General Manager Resource Infrastructure Planning  Mike Francollino, Chief Customer and Enterprise Services Officer

1:30 p.m.	6.	<b>Compliance Reports:</b> I-2 Financial Condition and Activities & I-8 Asset Protection - Annual City Auditor's Report G-7 (Annual external)  E-2 CEO/Board Partnership Responsibilities <ul style="list-style-type: none"> <li>• Water Outlook</li> </ul>	Travas Deal, Chief Executive Officer  Nick Harris, Water Resource Engineer
1:45 p.m.	7.	<b>Items Called Off Consent Calendar</b>	Chair Donelson
1:50 p.m.	8.	<b>UPAC Policy and Bylaw Changes</b> <u>Vote</u> to approve changes to the Utilities Policy Advisory Committee Bylaws per Utilities Policy Advisory Committee Bylaws Rule 12(a).	Bethany Schoemer, Strategic Planning and Governance Specialist Senior
2:00 p.m.	9.	<b>Utilities Board Bylaw Updates</b> <u>Vote</u> to approve changes to the Utilities Board Bylaws per Utilities Board Bylaws Rule 12.	Bethany Schoemer, Strategic Planning and Governance Specialist Senior
2:10 p.m.	10.	<b>UPAC Assignment Scope</b> <u>Discussion</u> regarding new Utilities Policy Advisory Committee Assignment and possible <u>vote</u> on new assignment.	Chair Donelson
2:25 p.m.	11.	<b>2024AB Bond Ordinance</b> <u>Informational presentation</u> regarding City Council approval of the 2024AB Bond Ordinance per City Charter § 7-80 and City Code section 12.1.104.	Adam Hegstrom, Treasury and Finance Manager
2:40 p.m.	12.	<b>I-3 Policy Update – Utilities Construction of Water and Wastewater distribution/collection infrastructure</b> <u>Vote</u> to approve changes to the I-3 Financial Planning and Budgeting per City Code section 12.1.105 and Excellence in Governance Policy Manual, Policy C-6.	Scott Shirola, Pricing and Rates Manager
2:55 p.m.	13.	<b>Electric Cost Adjustment/Gas Cost Adjustment Filing</b> <u>Informational presentation</u> regarding City Council approving ECA/GCA rate adjustments per Excellence in Governance Policy Manual, Policy G-6.	Scott Shirola, Pricing and Rates Manager
3:10 p.m.	14.	<b>Arkansas Basin Water Sharing Program Water Rights Acquisition</b> <u>Informational presentation</u> regarding City Council approval of a water rights acquisition.	Kim Gortz, Water Resource Manager  Kelly Roesch, Project Manager, Arkansas Valley Field Office
3:30 p.m.	15.	<b>Board Member Updates</b>	Board of Directors

**3:35 p.m.      16.    Summary of Board Actions**

Gail Pecoraro, Utilities  
Board Administrator

**3:40 p.m.      17.    Adjournment**

Chair Donelson

## MINUTES

### Colorado Springs Utilities Board Meeting Wednesday, May 22, 2024

#### **Utilities Board members present via Microsoft Teams or Blue River Conference Room:**

Chair Dave Donelson, Vice Chair Yolanda Avila, Lynette Crow-Iverson, Nancy Henjum, Randy Helms, David Leinweber, Mike O'Malley, Brian Risley and Michelle Talarico

#### **Utilities Board Members Excused:**

None

#### **Staff members present via Microsoft Teams or Blue River Conference Room:**

Travas Deal, Lisa Barbato, Mike Francolino, Tristan Gearhart, Somer Mese, Jay Anderson, Joe Awad, Kerry Baugh, Pattie Benger, Steve Berry, Sean Bills, Jenny Bishop, Melissa Brown, Sage Church, Andy Colosimo, Dan Dilts, Matt Dudden, Natalie Eckhart, Marcela Espinoza, Brian Grim, Kelly Guisinger, Mallorie Hanson, Diana Harmon, Nick Harris, Brittany Harrison, Heather Harvey, Adam Hegstrom, John Hunter, Jennifer Jordan, Brenda Koskey, Birgit Landin, Drew Latrell, Brian Leach, Noemi Martinez, Tara McGowan, Danielle Nieves, Katlin Nolt, Jacqueline Nunez, Christopher Olney, Abigail Ortega, David Padgett, Gail Pecoraro, Jessica Ramirez, Jessica Rheinschmidt, Scott Shirola, Leslie Smith, Stuart Smith, April Speake, Admar Susic, Matthew Thieme, Amy Trinidad, Natalie Watts, Al Wells, Michelle Wills-Hills, Justin Zeisler and Jane Zook

#### **City of Colorado Springs staff members present via Microsoft Teams or Blue River Conference Room:**

Renee Congdon, David Beckett, Jamie Fabos, Michael Montgomery, Alexander Ryden, Carl Schueler and Ryan Trujillo

#### **Citizens present via Microsoft Teams or Blue River Conference Room:**

Matt Crusted, Aiden Hulting, Jeff Finn, Carrie Guy, Chris Jenkins, William Landin, Shanna Lewis, Chris Libert, Jan Martin, Tim Seibert, Logan Shay and Christian Sitarz

#### **1. Call to Order**

Chair Donelson called the Utilities Board meeting to order at 1:01 p.m., and Ms. Gail Pecoraro, Utilities Board Administrator, called the roll.

#### **2. Invocation and Pledge of Allegiance**

Pastor Shay Logan with Calvary Workship Center delivered the invocation, and Chair Donelson led the Pledge of Allegiance.

### **3. Consent Calendar**

#### **3a. Approval of Utilities Board Meeting Minutes: April 17, 2024, Utilities Board Meeting**

The Consent Calendar was unanimously approved.

### **4. Customer Comments**

There were no customer comments.

### **5. Recognition**

- Drinking Water Week and Worker Appreciation

Ms. Tara Kelly, Wastewater Treatment Manager, and Mr. Sage Church, Operations Superintendent I, recognized Springs Utilities employees who celebrated Drinking Water Week May 5 - 11, 2024.

- Employees who worked the 2024 Windstorm

Chair Donelson acknowledged employees who worked to bring more than 10,400 customers back online following the May 6, 2024, windstorm. The organization's employees excelled in their response. They were recognized for their teamwork, dedication and demonstration of responsibility.

### **6. Compliance Reports**

- I-2 Financial Condition and Activities Q4 2023 and Q1 2024 Update – Contracts over \$500K\*\*\* - G7

Chair Donelson explained the compliance reports are on the agenda by exception and asked if there were any questions. There were none.

- E-2 CEO Responsibilities
  - ECA/GCA
  - Water Outlook

Mr. Justin Zeisler, Water Resource Engineer, reviewed the local weather conditions as of May 15, 2024. The Colorado drought monitor shows some areas of moderate to severe drought in the southern and eastern parts of the state, with abnormally dry conditions across a large portion of western and eastern Colorado.

Mr. Zeisler stated the snowpack in the Arkansas River Basin is 130% of normal as of May 16, 2024, and in the Colorado River Headwaters Basin is 119% of normal. He reviewed the 2024 water demands, the monthly water use for May and the 2024 actual water consumption. Colorado Springs' system-wide storage is at 79.5% of capacity, 12.2% above the shorter-term average of 67.3%. The organization has 3.1 years of demand in storage (based on the past 3 years of demand). South Catamount

Reservoir remains closed for planned dam maintenance. South Suburban Reservoir has been drained for outlet work repairs.

**7. Items Called Off Consent Calendar**

There were none.

**8. Resolution reaffirming the Arkansas Basin Preservation Principles and opposing City of Aurora's water right's purchase in Otero County**

Ms. Abigail Ortega, General Manager of Resource Infrastructure Planning, provided a presentation giving historical information on the Arkansas Preservation Principles, which was signed in 2003 by the City of Colorado Springs, Southeastern, Lower Arkansas, and Upper Arkansas Water Conservancy Districts, the City Council of Pueblo and the Pueblo Board of Water. Earlier this year, the City of Aurora purchased additional shares of stock in the Catlin Canal Company and other water rights in the Arkansas River Basin. Staff expressed that this is a violation of the original 2000 Southeastern Colorado Water Conservancy District Intergovernmental Agreement.

The Utilities Board agreed to move this matter forward to the June 11 City Council meeting.

**9. Proposed changes to the Undergrounding Policy**

Mr. Joe Awad, General Manager of Systems Planning and Projects, presented information on two proposals.

This presentation included cost comparisons for overhead vs. underground cost estimates, structures, attributes and considerations, and what industry peers are doing. Current construction practice and policy were reviewed.

- A resolution directing the CEO to underground portions of the Kelker south plant 115kv transmission line within the footprint within the footprint of the COS creek plan.

Utilities Board Member Michelle Talarico spoke in favor of the resolution, as the resolution sponsor. Resident Jan Martin, board president of Pikes Peak Waterways, spoke in favor of Board Member Talarico's resolution. Martin stated that that Pikes Peak Waterways has been working in conjunction with other community partners on restoring the COS creek plan. This is a long-term project.

Chris Lieber, principle at N.E.S., also spoke in favor of Ms. Talarico's resolution. N.E.S. is the project manager for the COS Creek Plan. Lieber said that the COS Creek Plan has been listed with the Army Corp of Engineers for grant funding at both the federal, state and other philanthropic opportunities.

Resident Max Crumsted who was there on behalf of the Mill Street Housing Association had specific questions regarding this resolution, which were answered.

Board Member Talarico made a motion to adopt the Resolution directing the CEO to underground portions of the Kelker south plant 115kv transmission line within the footprint of the OS creek plan. Ms. Henjum seconded this motion. This resolution passed with a vote of 7 to 2, with Board members Donelson and Risley opposed.

- A resolution directing the CEO to underground portions of the Kelker south plant 115kv transmission line adjacent to residential areas

Vice Chair Yolanda Avila spoke to this resolution as the resolution sponsor. There were no citizen comments with regard to this resolution.

- Board Member Avila made a motion to adopt the resolution directing the CEO to underground portions of the Kelker south plant 115kv transmission line adjacent to residential areas. Ms. Henjum seconded this motion. This resolution failed on a vote of 2 to 7, with all members but Ms. Avila and Ms. Talarico voting against the motion.

## **10. Board Member Updates**

Board Member Helms encouraged looking at distribution line undergrounding.

Board Member Talarico would like to add more undergrounding / overhead transmission discussion to future Strategic Planning Committee meetings.

Board Member O'Malley asked if Strategic Planning / Finance was "forever" joined. It is not, the previous meeting was a one-time joint meeting. He explained he would like to see how Project COPE can be expanded, – perhaps expanding it to an app or putting a QR code on Springs Utilities trucks.

Chair Donelson explained citizens are invited to the first State of the Utility on Thursday, June 6 at 2:30 p.m., at COS City Hub.

Board Member Henjum explained she found the joint Strategic Planning Committee/ Finance Committee meeting very helpful. She would like to see this occur on an annual basis. She stated the Employee Climate Survey is currently underway. The goal this year is 80% participation, the Board encourages all employees to complete this year's survey. They want to hear how they are doing.

Vice Chair Avila stated she would like continue to work on undergrounding transmission lines. She gave an update from the May Personnel Committee meeting.

## **11. Summary of Board Actions**

- Approval of April 17, 2024 Utilities Board Meeting Minutes
- Approval to place a resolution reaffirming the Arkansas Basin Preservation Principles and in support of regional efforts to ensure that Arkansas River Basin water is not permanently transferred out of the Basin on a future City Council regular agenda
- Approval of a resolution directing the CEO to underground portions of the Kelker south plant 115kv transmission line within the footprint within the footprint of the COS creek plan
- A resolution directing the CEO to underground portions of the Kelker south plant 115kv transmission line adjacent to residential areas failed on a vote of 2 to 7.

## **12. Executive Session**

Ms. Congdon, City Attorney's Office – Utilities Division Chief, read the following language to enter Executive Session:

In accordance with City Charter art. III, § 3-60(d) and its incorporated Colorado Open Meetings Law, C.R.S. § 24-6-402(4)(d) and Utilities Board Bylaws Rules 10(c)(4) the Utilities Board, in Open Session, is to determine whether it will hold a Closed Executive Session on one issue. The issue to be discussed involves specialized details of security arrangements involving critical infrastructure and operational assets.

The City Attorney's Office, on behalf of the Chair of the Utilities Board, shall poll the Utilities Board members, and, upon consent of two-thirds of the members present, may conduct a Closed Executive Session. In the event any Utilities Board member is participating electronically or telephonically in the Closed Executive Session, each Utilities Board member participating electronically or telephonically in the Closed Executive Session shall affirmatively state for the record that no other member of the public not authorized to participate in the electronic Closed Executive Session is present or able to hear the matters discussed as part of the Closed Executive Session. If consent to the Closed Executive Session is not given, the item may be discussed in Open Session or withdrawn from consideration.

Ms. Congdon polled the Utilities Board Members. With a vote of 8-0, with Board Member Leinweber excused, the Utilities Board unanimously approved to go into Executive Session. The Utilities Board took a five-minute break and entered Executive Session.

## **13. Adjournment**

The meeting adjourned at 4:41 p.m.

# Board Memo Agenda Item

## Staff Report

<b>Date:</b> <small>(Date of Utilities Board Meeting)</small>	June 18, 2024		
<b>To:</b>	Utilities Board		
<b>From:</b>	Travas Deal, Chief Executive Officer		
<b>Subject:</b>	Eaton Downtown Conference		
<b>NARRATIVE:</b>			
<b>Desired Action:</b> Choose only one	<input type="checkbox"/> Approval <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Information		
<b>Executive Summary:</b>	<p>These individuals led the Eaton Electrical Network Systems Conference which recently took place in Colorado Springs. The conference focused on small networks similar to our own Downtown Network. A group of 41 utilities from across North America attended this conference where they were able to make contacts and share information related to these niche systems. Our team brought energy and excitement that was shared throughout the conference and did an amazing job representing Colorado Springs Utilities. Engineer V Steve Schaarschmidt received a 40 year award for his participation with this group. We are very proud of the impact these individuals have for their industry and our community.</p>		
<b>Benefits:</b>	N/A		
<b>Board Policy:</b> <small>If this impacts one of the board policies, indicate that here.</small>	N/A		
<b>Cost / Budget:</b> <small>Include the projected cost or budget here.</small>	N/A		
<b>Affected Parties:</b> <small>This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.</small>	Steve Schaarschmidt, Susan Lovejoy and Cory Hazen		
<b>Alternatives:</b>	N/A		
<b>Submitter:</b>	Abby Ortega	<b>Email Address:</b>	ajotega@csu.org
<b>Division:</b>	Systems Planning and Projects	<b>Phone Number:</b>	719.668.8748
<b>Department:</b>	Infrastructure & Resource Planning	<b>Date Submitted:</b>	May 30, 2024
<b>SPG Staff Use Only:</b>	Consent Calendar <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Item Number 05

ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING.

# Board Memo Agenda Item

## Staff Report

<b>Date:</b> (Date of Utilities Board Meeting)	June 18, 2024
<b>To:</b>	Utilities Board
<b>From:</b>	Travas Deal, Chief Executive Officer
<b>Subject:</b>	Expanding Customer Excellence Award
<b>NARRATIVE:</b>	
<b>Desired Action:</b> Choose only one	<input type="checkbox"/> Approval <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Information
<b>Executive Summary:</b>	<p>Colorado Springs Utilities was named a finalist in CS Week’s Expanding Excellence Award. CS Week is the educational and customer service professional association serving the electric, gas, and water/wastewater utility industry across the world. This award recognizes outstanding contributions, innovations, and technology excellence in utility customer service. Colorado Springs Utilities initiated its Customer Technology Modernization Program in April 2020. The key systems used for Meter-to-Cash include Customer Care &amp; Billing, Meter Data Management, MyUsage, My Business Usage, and MyAccount, along with significant integrations into other organizational systems.</p> <p>These systems have undergone extensive customization over the years, hindering their ability to support a flexible and resilient service. Many components are now past their end-of-life, posing significant risks to our organization. By moving to C2M the organization was able to reduce the number of customizations from 617 to 85. Colorado Springs Utilities successfully launched C2M on May 8, 2023, migrating approximately 650,000 meters and their corresponding customers to the new platform. The program introduced a new interface and improved capabilities for both customers and the 600 internal employees who use the system. Furthermore, the new implementation helped mitigate operational risks associated with end-of-life applications and database infrastructure.</p> <p>We attribute the overall success of the project to the tight integration among various workstreams, suppliers, and stakeholders throughout its lifecycle. Additionally, the program’s leadership prioritized customer focus and change management to prepare the organization for this transformation.</p>
<b>Benefits:</b>	N/A
<b>Board Policy:</b> If this impacts one of the board policies, indicate that here.	N/A
<b>Cost / Budget:</b> Include the projected cost or budget here.	N/A
<b>Affected Parties:</b> This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.	N/A

<b>Alternatives:</b>		N/A	
<b>Submitter:</b>	Dan Norton	<b>Email Address:</b>	dnorton@csu.org
<b>Division:</b>	Customer & Enterprise Services	<b>Phone Number:</b>	719.668.4688
<b>Department:</b>	Customer Service	<b>Date Submitted:</b>	05.28.2024
<b>SPG Staff Use Only:</b>	Consent Calendar <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Item Number 05
ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING			



# OFFICE OF THE CITY AUDITOR COLORADO SPRINGS, COLORADO

Jacqueline M. Rowland  
City Auditor, CPA CFE PMP

## 24-14 Colorado Springs Utilities Board Instruction I-2, Financial Conditions and Activities, and I-8, Asset Protection

June 2024

### **Purpose**

The purpose of this high level compliance review was to determine whether Colorado Springs Utilities (Utilities) complied with Utilities Board Instructions to the Chief Executive Officer, Policies I-2, Financial Condition and Activities, and I-8, Asset Protection. In addition to verifying management’s 2023 quarterly and semi-annual monitoring reports, our objectives included assurance that any known violations were reported to the Utilities Board.

### **Highlights**

Based on our review, we conclude that Colorado Springs Utilities and the Chief Executive Officer were in compliance with Utilities Board Instructions to the Chief Executive Officer, Policies I-2, Financial Condition and Activities, and Policy I-8, Asset Protection.

The Office of the City Auditor (OCA) completed our review as directed by the Utilities Board. Under Policy Guidelines— G-3, Compliance Report Frequency and Method, the OCA is required to monitor compliance with Policies I-2, Financial Condition and Activities, and I-8, Asset Protection, annually.

Policy I-2 states, “The Chief Executive Officer shall direct that financial condition and activities, and actual expenditures are consistent with Board expected results”. Policy I-8 states, “The Chief Executive Officer shall direct that enterprise assets are protected, adequately maintained, and not unnecessarily risked”. Our audit included verification of the accuracy and reliability of statements made in the monitoring reports prepared by Colorado Springs Utilities for the Utilities Board. Procedures included obtaining supporting documents, policies, reports, and data recalculations.

We would like to thank Utilities staff for their supportive cooperation during this review.

This audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing, a part of the Professional Practices Framework promulgated by the Institute of Internal Auditors.

City Council’s Office of the City Auditor  
City Hall, 107 North Nevada Ave. Suite 205, Mail Code 1542, Colorado Springs CO 80901-1575  
Tel 719-385-5991 Fax 719-385-5699 Reporting Hotline 719-385-2387  
[www.ColoradoSprings.gov/cityauditor](http://www.ColoradoSprings.gov/cityauditor)



**Date:** June 18, 2024

**To:** Utilities Board

**From:** Travas Deal, Chief Executive Officer

**Subject:** **Excellence in Governance Monitoring Report**  
**Utilities Board/Chief Executive Officer Partnership Expectations (E-2)**

**Desired Action:** Monitoring

EXPECTATIONS	
Category:	<b>Utilities Board/Chief Executive Officer Partnership Expectations</b>
Policy Number:	<b>E: 2 (Chief Executive Officer Responsibilities)</b>

**The Utilities Board and the Chief Executive Officer work in partnership to achieve excellence in governance and operations to attain long-term organizational success and sustainability.**

**June 2024 Water Outlook using data as of May 31, 2024**

Locally, temperatures were below average, and precipitation was below average in May. Demands were greater than last year at this time.

2024 Demands

May use averaged 70.7 million gallons per day (MGD), which was about 8.5 percent greater than last May. Temperatures in May were below the thirty-year average at 57.1 degrees Fahrenheit, which was 0.9 degrees below normal. Total precipitation for May was 1.02 inches, which is below normal. Year to date precipitation is 6.02 inches, which is 124 percent of normal.

Current Reservoir Levels

Local storage is currently at about 55,878 acre-feet (85 percent of capacity). The 1991-2020 average is 81 percent of capacity. Rampart Reservoir is at 96 percent of capacity, and Pikes Peak storage is at 66 percent of capacity. System wide, total storage is about 208,500 acre-feet (80 percent of capacity). Last year at this time, total system wide storage was 78 percent of capacity. It was about 76 percent at this same time in 2022, about 75 percent of capacity in 2021, about 81 percent of capacity in 2020, about 73 percent of capacity in 2019, about 85 percent of capacity in 2018, about 83 percent of capacity in 2017, about 81 percent of capacity in 2016, and about 84 percent of capacity in 2015. The 1991-2021 average system wide storage for the end of May is 76 percent of capacity.

### Water Supply Outlook

The U.S. Drought Monitor shows pockets of moderate/severe drought conditions throughout the U.S. The Colorado drought monitor shows some areas of moderate drought in the southwest and eastern part of the state, with abnormally dry conditions across a large portion of western and eastern Colorado. The seasonal drought outlook predicts drought development is likely in southern Colorado between now and August 31, 2024. The three-month climate outlook shows chances for below-average precipitation across most of the state with slightly lower chances for below-average precipitation across the southwest portion of Colorado. The three-month outlook also shows higher chances for above average temperatures across Colorado.

### Operational Notes

South Catamount Reservoir capacity remains restricted for planned dam maintenance. South Suburban Reservoir is drained for outlet work repairs. Total system storage is at 80 percent of capacity and holds about 3.0 years of demand, which is above average for the end of May. Local storage contains about 296 days of demand.



Colorado Springs Utilities  
*It's how we're all connected*

# Water Outlook

Nick Harris, P.E.

Water Resource Engineer, Water Resource Planning

June 1, 2024

# Local Weather Conditions as of May 31, 2024

## Precipitation (Inches of Moisture)

- May 2024 – 1.02 in. (51% of normal)
- 2024 YTD Total – 6.02 in. (124% of normal)

## Average Temperature (Degrees F)

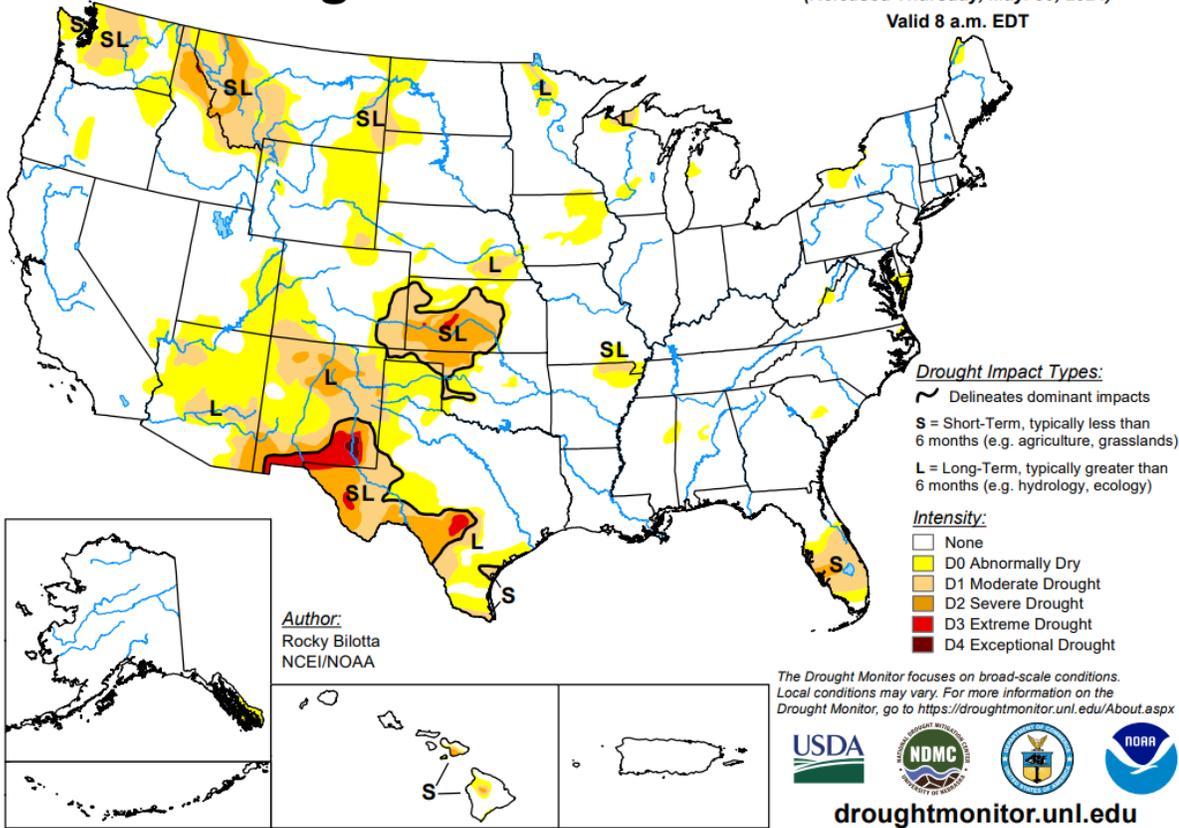
- May 2024 – 57.1 Deg. (0.9 deg. below normal)
- 2024 YTD Average – 43.4 Deg. (1.2 deg. above normal)



# DROUGHT MONITOR

## U.S. Drought Monitor

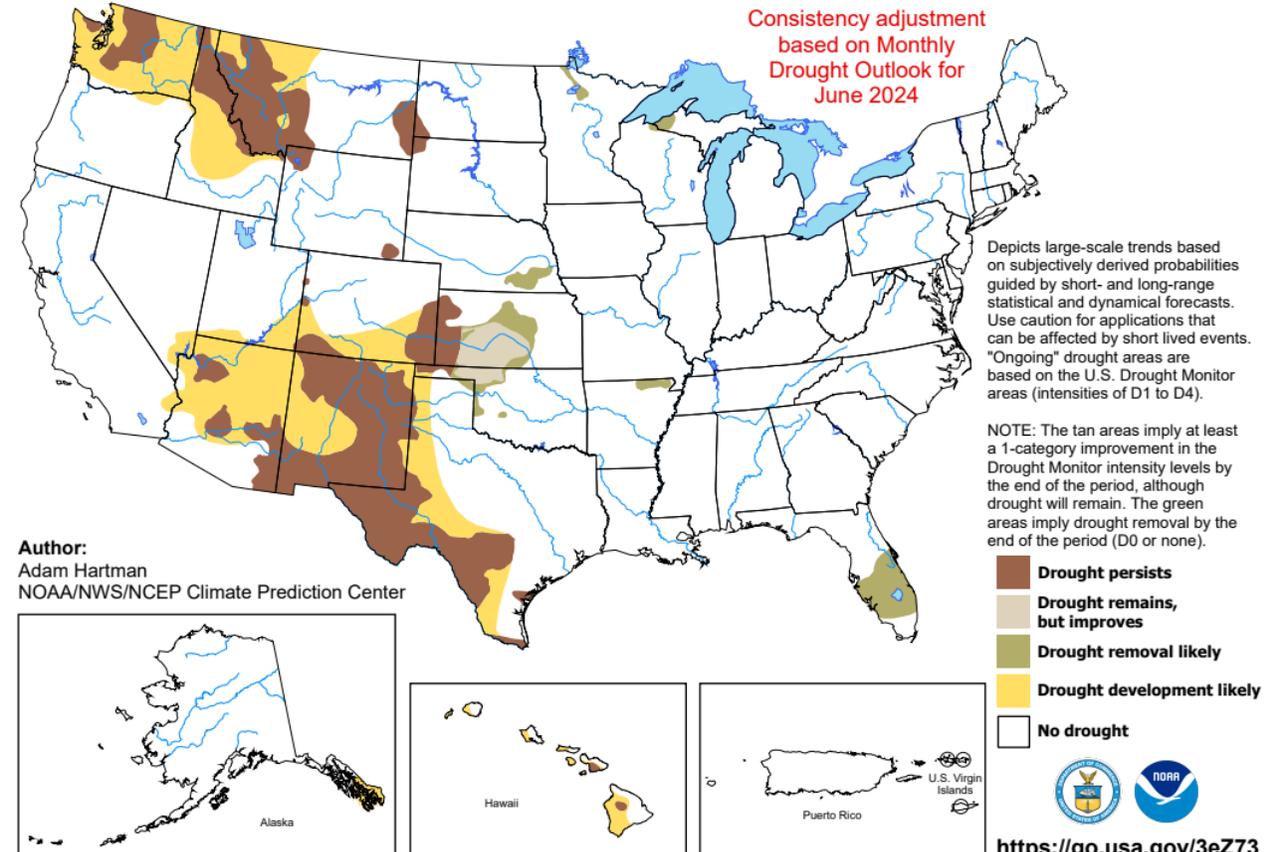
May 28, 2024  
 (Released Thursday, May. 30, 2024)  
 Valid 8 a.m. EDT



## U.S. Seasonal Drought Outlook Drought Tendency During the Valid Period

Valid for June 1 - August 31, 2024  
 Released May 31, 2024

Consistency adjustment  
 based on Monthly  
 Drought Outlook for  
 June 2024



# Colorado

Map released: Thurs. May 30, 2024

Data valid: May 28, 2024 at 8 a.m. EDT

## Intensity

- None
- D0 (Abnormally Dry)
- D1 (Moderate Drought)
- D2 (Severe Drought)
- D3 (Extreme Drought)
- D4 (Exceptional Drought)
- No Data

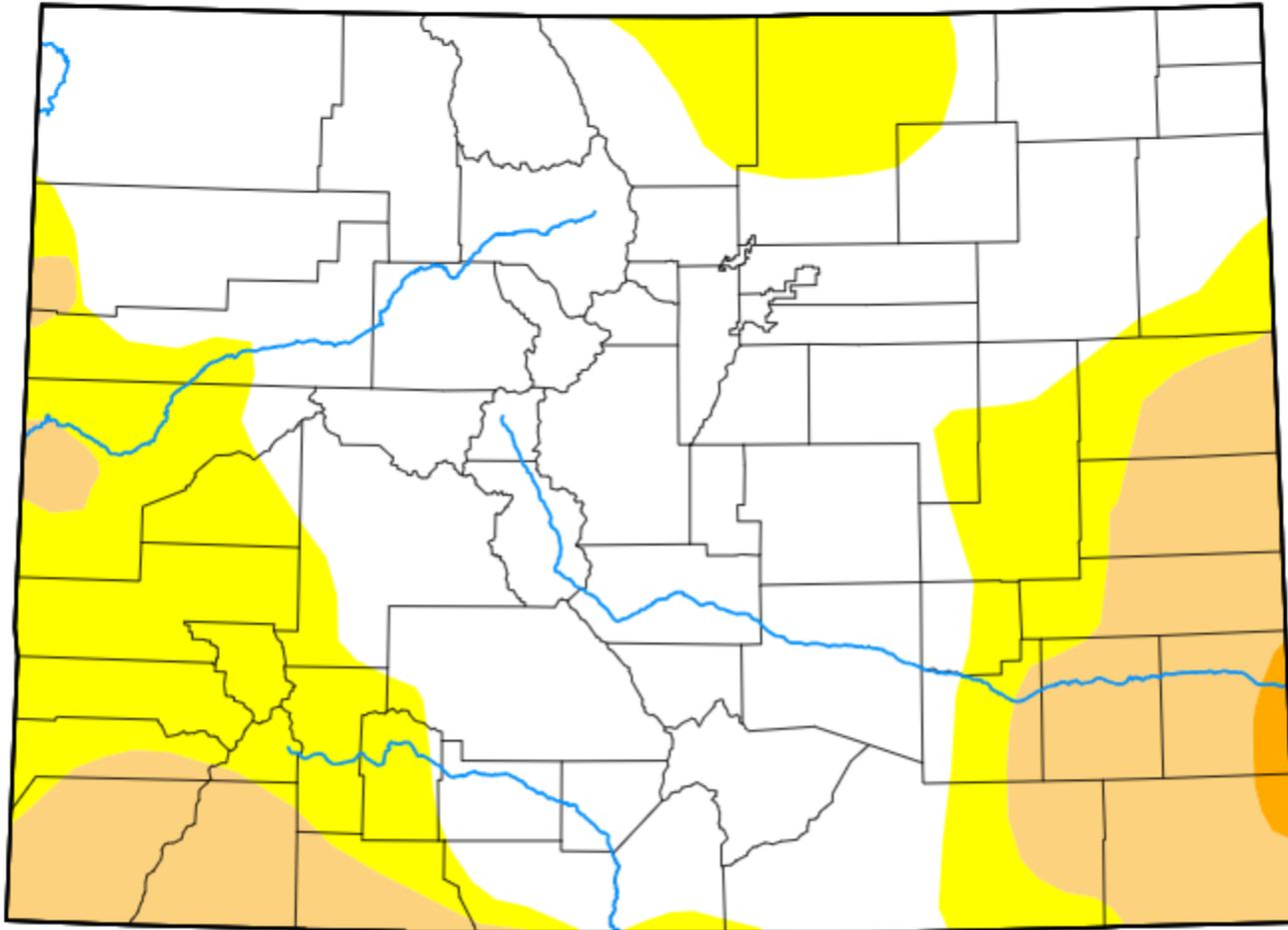
## Authors

United States and Puerto Rico Author(s):

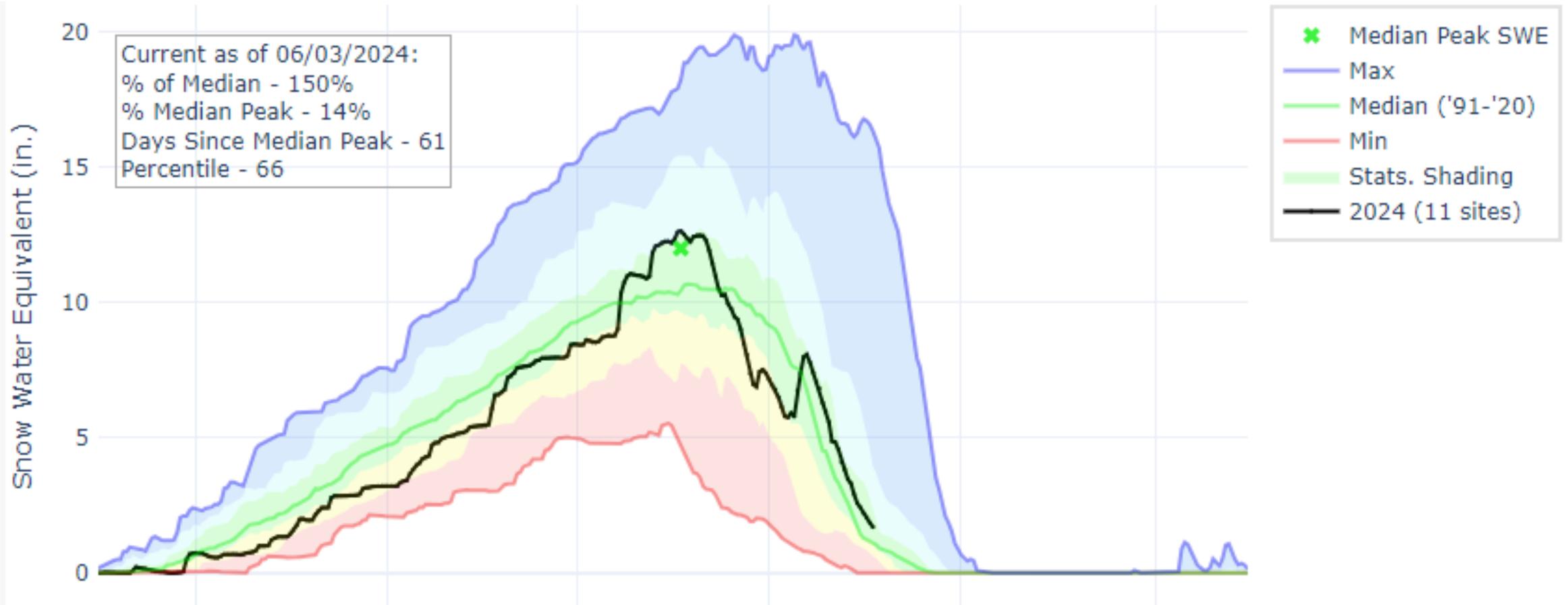
[Rocky Bilotta](#), NOAA/NCEI

Pacific Islands and Virgin Islands Author(s):

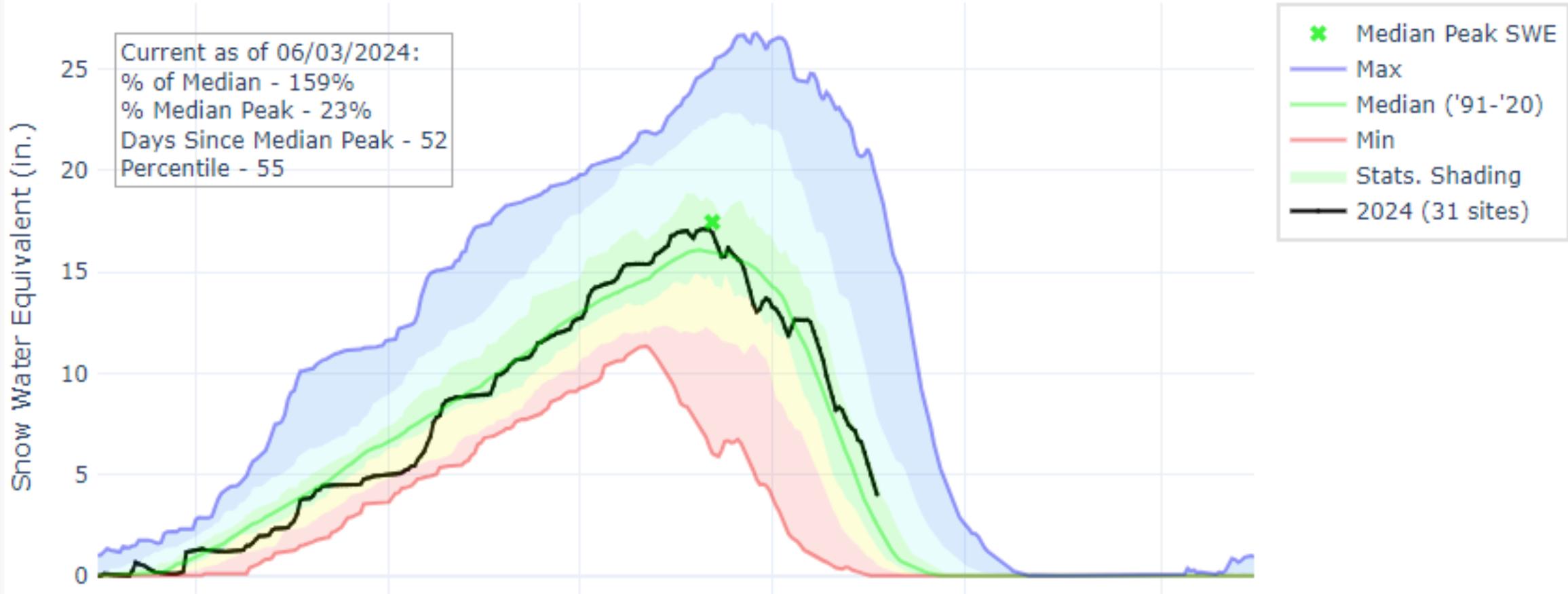
[Lindsay Johnson](#), National Drought Mitigation Center



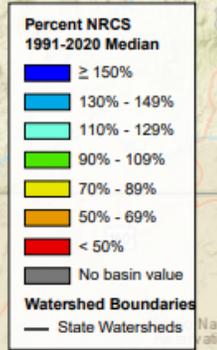
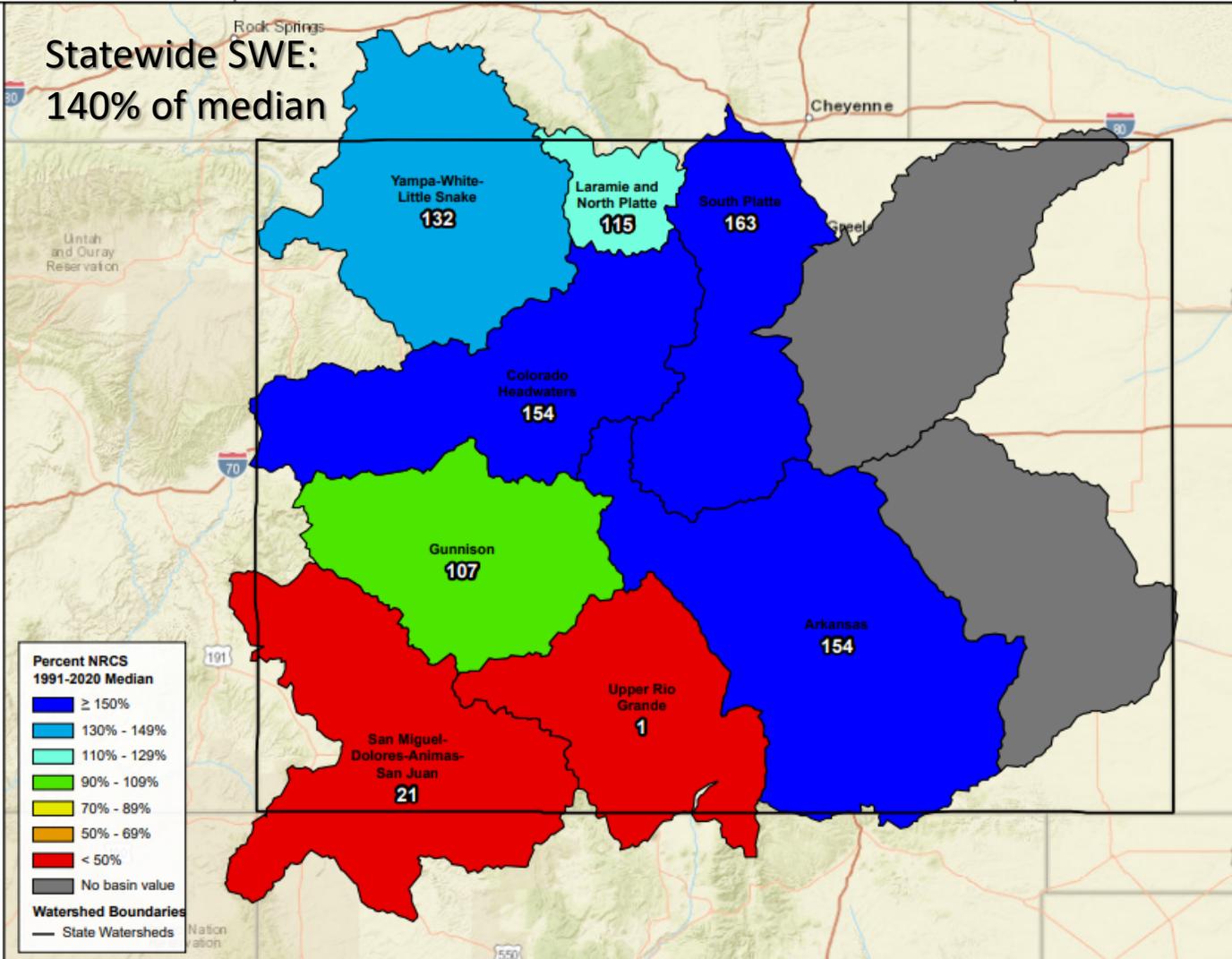
## Snowpack in the Arkansas River Basin is 150% of normal



# Snowpack in the Colorado River Headwaters Basin is 159% of normal



Statewide SWE:  
140% of median



# 2024 Demands

## May

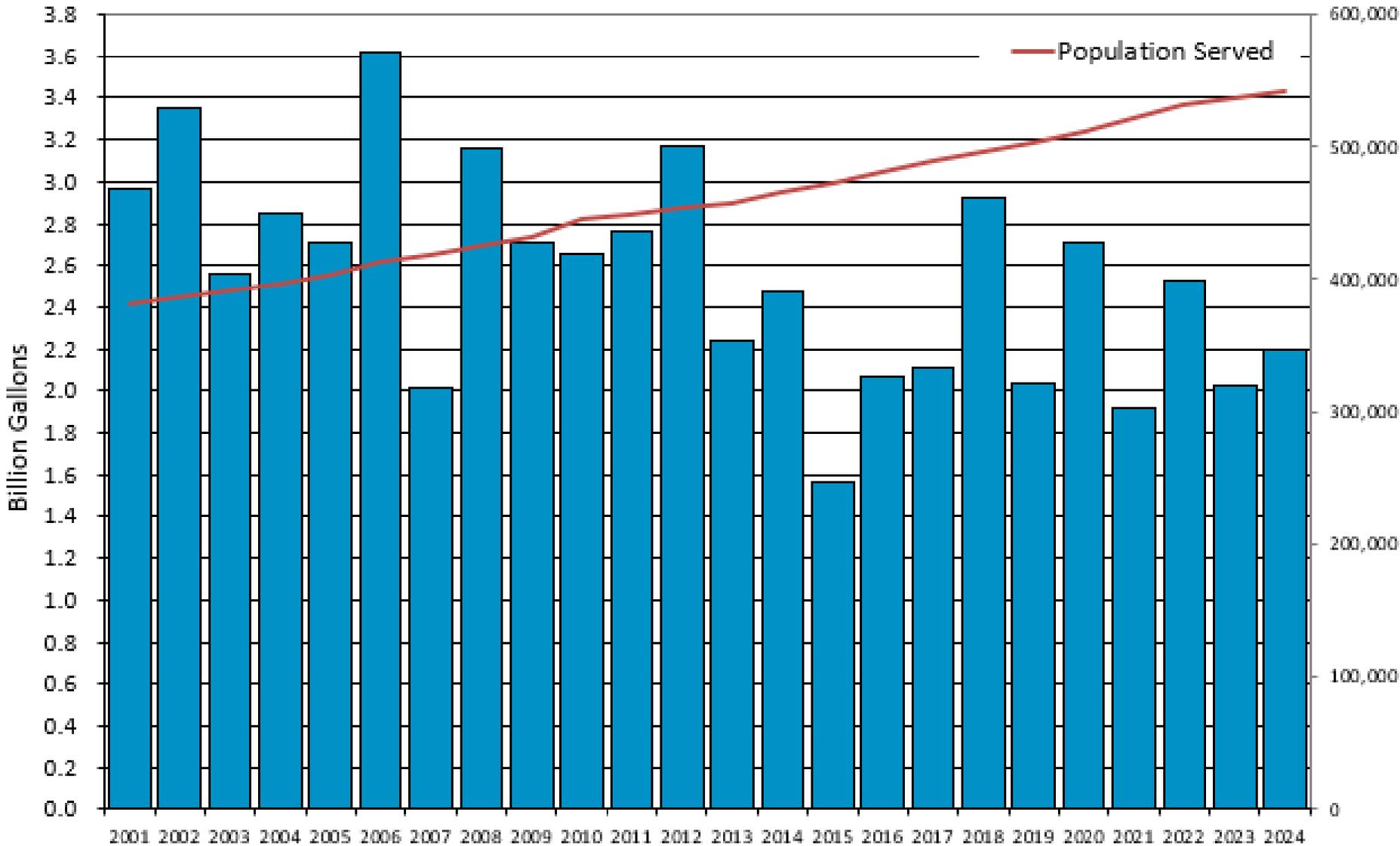
- Averaged 70.7 MGD
- 8.5% greater than May 2023

## 2024 Year to Date through May 31

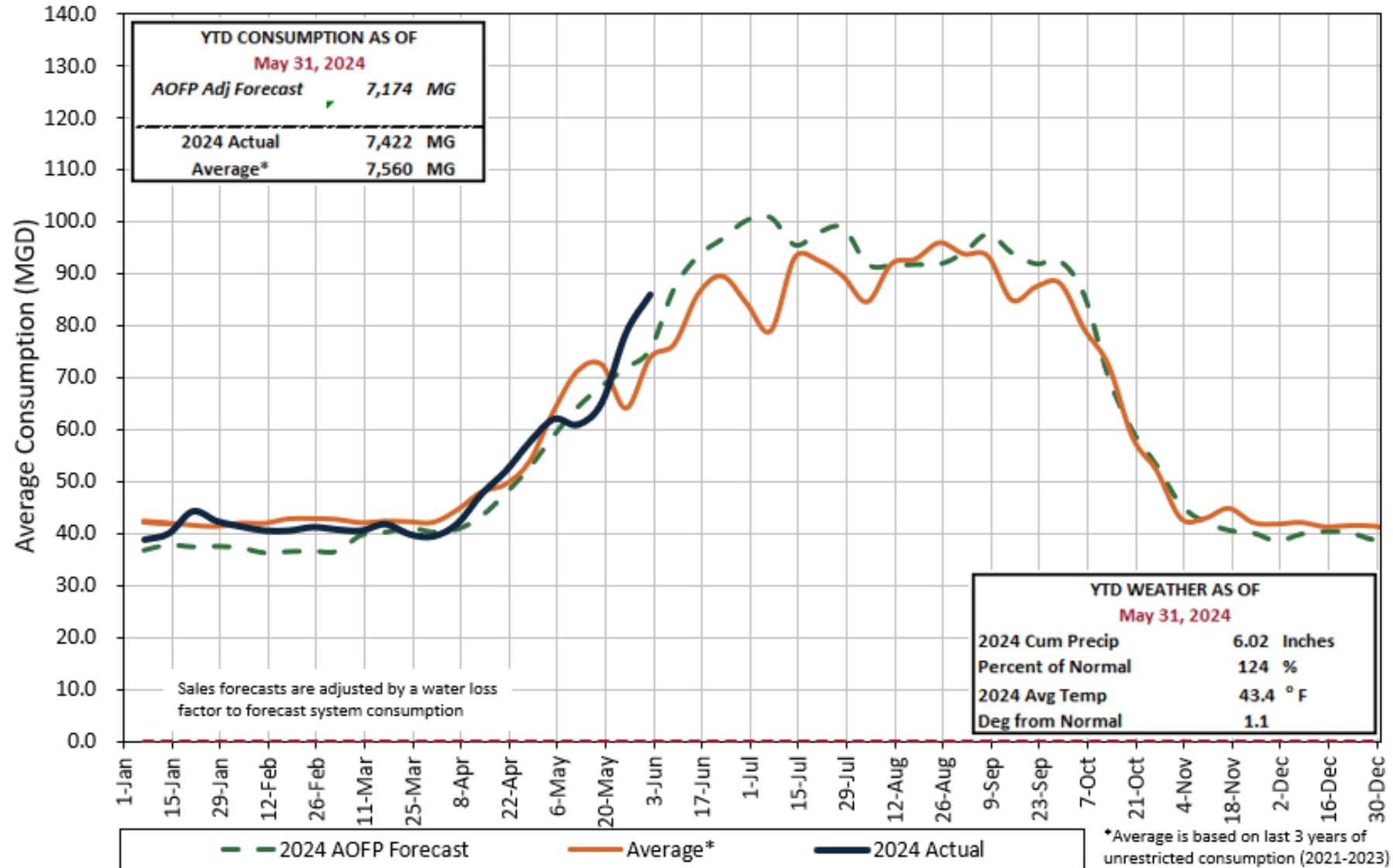
- Averaging 48.8 MGD, 7.4 BG total
  - 0.7% more than 2023
  - 0.05 Billion Gallons more than 2023



# Monthly Water Use for May



## 2024 Actual Consumption (Weekly Data)



# Reservoir Levels

May 31, 2024

- Pikes Peak 66 %
  - 91-20 Avg. 71 %
- Rampart 96 %
  - 91-20 Avg. 88 %
- Local Total 85 %
  - 91-20 Avg. 81 %
- System Total 80 %
  - 91-20 Avg. 76 %



### Colorado Springs' System Wide Storage:

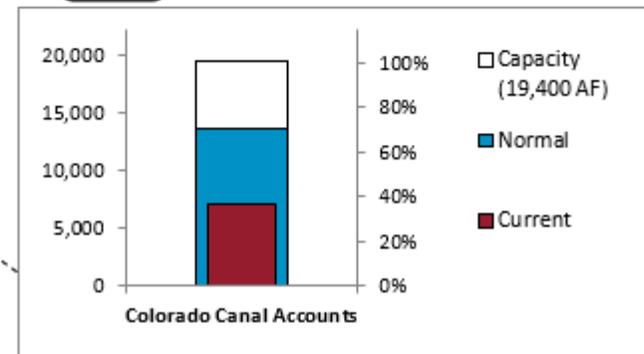
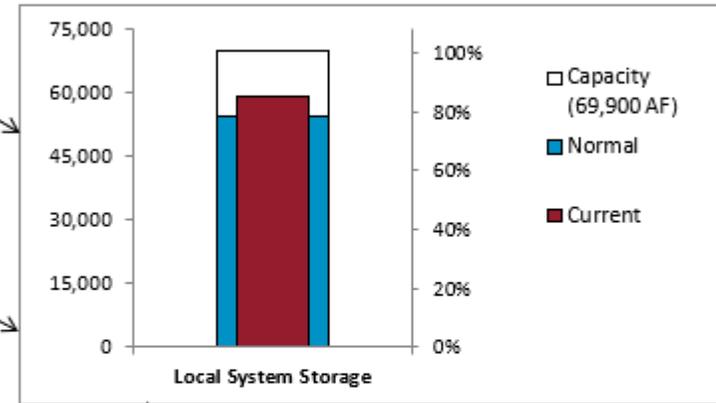
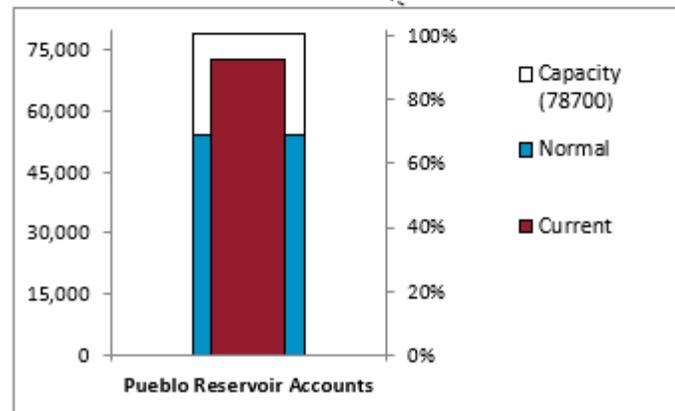
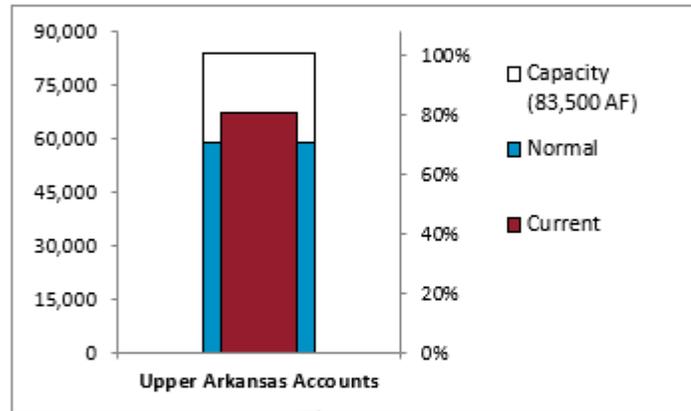
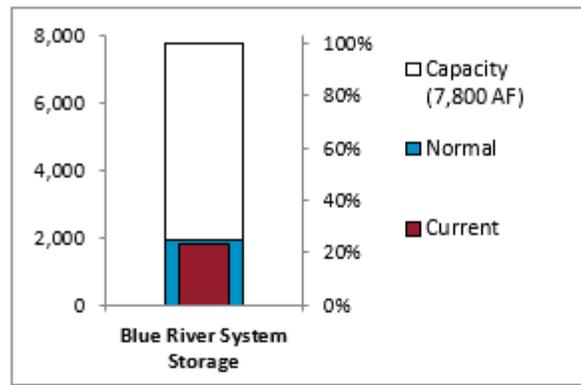
May 31, 2024 208,500 af

80.3 %

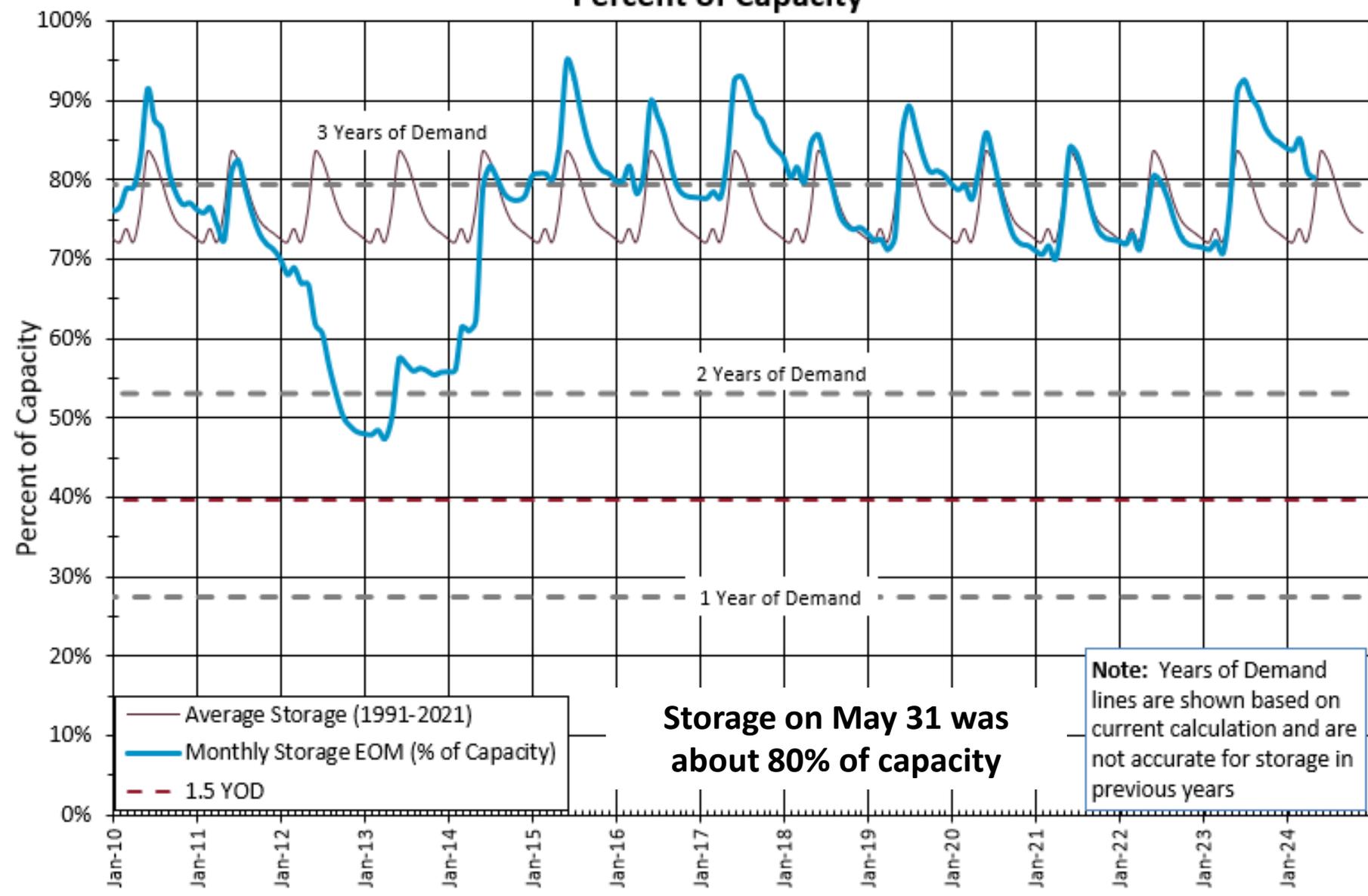
2001-2022 avg 183,300 af

70.6 %

Average YTD Demand 48.8 MGD



## Monthly Storage Percent of Capacity



# Water Outlook

- Situation Outlook Summary
  - System-wide storage is at 80.3% of capacity, about 4% above our long-term average
  - About 3.0 years of demand in storage, based on the past 3 years of demand
  - Have 296 days of demand in local storage
- Three-month outlook predicts
  - Higher chances for above average temperatures across Colorado
  - Higher chances for below average precipitation across Colorado
- We continue to monitor snowpack, demand and storage to maximize available water supply

# Operational Notes

## Storage Conditions

- South Catamount Reservoir capacity remains restricted for planned dam maintenance
- South Suburban Reservoir is drained for outlet work repairs



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# Board Memo Agenda Item Staff Report

<b>Date:</b> (Date of Utilities Board Meeting)	June 18, 2024
<b>To:</b>	Utilities Board
<b>From:</b>	Travas Deal, Chief Executive Officer
<b>Subject:</b>	Utilities Policy Advisory Committee (UPAC) and Bylaws Update

### NARRATIVE:

<b>Desired Action:</b> Choose only one	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Discussion <input type="checkbox"/> Information
<b>Executive Summary:</b>	<p>UPAC is a fact-finding body whose mission is to review, analyze and, when appropriate, provide recommendations to the Utilities Board regarding the various overall strategic operating and financial policies for Colorado Springs Utilities.</p> <p>At the direction of the Utilities Board, staff is bringing forward changes to UPAC's bylaws including changes that will: ensure assignments are concluded in a timely manner with City elections, establish a UPAC liaison from the Utilities Board to work directly with UPAC on assignments and other miscellaneous administrative changes.</p> <p>The proposed changes were brought to the joint Strategic Planning/Finance committee at their joint May 17 meeting and the June UPAC meeting for review.</p>
<b>Benefits:</b>	These changes are intended to improve assignment clarity for UPAC and establish boundaries on assignment timelines to maximize the effectiveness of UPAC.
<b>Board Policy:</b> <small>If this impacts one of the board policies, indicate that here.</small>	Operational Resources P-5
<b>Cost / Budget:</b> <small>Include the projected cost or budget here.</small>	N/A
<b>Affected Parties:</b> <small>This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.</small>	Utilities Board members, Utilities Policy Advisory Committee members, Colorado Springs Utilities staff and customers
<b>Alternatives:</b>	Do not approve or modify changes to UPAC bylaws.

<b>Submitter:</b>	Bethany Schoemer	<b>Email Address:</b>	bschoemer@csu.org
<b>Division:</b>	Administration and Human Resources	<b>Phone Number:</b>	719-668-3811
<b>Department:</b>	Public Affairs	<b>Date Submitted:</b>	June 3, 2024

<b>SPG Staff Use Only:</b>	Consent Calendar <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Item Number 8
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ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING.



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# UPAC Bylaws Updates

Bethany Schoemer, Strategic Planning and Governance  
Specialist

# Utilities Policy Advisory Committee (UPAC)

**Rule 1 (b):** The Committee is authorized to provide recommendations to the City Council, acting as Utilities Board (“Utilities Board”) regarding the various overall strategic operating and financial policies for Colorado Springs Utilities (“Utilities”). **The Committee may receive information about operational activities, but does not have review or approval authority over activities carried out in furtherance of established policies.** The Chief Executive Officer of Utilities (“Chief Executive Officer”) is solely responsible for the definition and implementation of activities and subsidiary policies as needed to carry out policy direction adopted by the Utilities Board. Questions as to whether those activities are consistent with established policies will be determined by the Utilities Board.



# Proposed Bylaw Changes



Adding language to ensure an assignment is completed within the timeframe of the Utilities Board that approved the assignment.



Establishing a UPAC liaison to provide support, guidance, direction to UPAC as they move through an approved assignment. This liaison will either be the Chair or Vice Chair of the Utilities Board.

# Role of UPAC Liaison

- Chair or Vice Chair of Utilities Board
- Bring forward ideas for UPAC assignments to the full Utilities Board
- Provide guidance, direction and support to UPAC during assignment
- Will work with Springs Utilities staff to ensure UPAC has the materials needed during an assignment

# Other changes to Bylaws

- Administrative clean up

## Rule 13. Application of Board Bylaws and City Council Rules

(a) In the event these UPAC Bylaws do not address a matter or issue, and such matter or issue is addressed by the Utilities Board Bylaws, the Committee shall apply the Utilities Board Bylaws when considering such matter or issue. In the event neither these UPAC Bylaws nor the Utilities Board Bylaws address a matter or issue, and such matter or issue is addressed by the Rules and Procedures of City Council, the Committee shall apply the Rules and Procedures of City Council when considering such matter or issue.

# Next Steps



**May 17**

Strategic Planning Committee:

*Discussion*



**June 5**

Utilities Policy Advisory Committee:

*Discussion*



**June 18**

Utilities Board Meeting:

*Approval*



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**UTILITIES POLICY  
ADVISORY COMMITTEE**

**BYLAWS**

Revised and Approved by the Utilities Board Effective August 17, 2022

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**COLORADO SPRINGS UTILITIES  
UTILITIES POLICY  
ADVISORY COMMITTEE  
BYLAWS**

**RULE 1. - COMMITTEE  
AUTHORITY AND PURPOSE**

(a) The Utilities Policy Advisory Committee (“UPAC” or “Committee”) was recognized by Colorado Springs Ordinance No. 03-204, as amended by Ordinance No. 13-81.

(b) The Committee is authorized to provide recommendations to the City Council, acting as Utilities Board (“Utilities Board”) regarding the various overall strategic operating and financial policies for Colorado Springs Utilities (“Utilities”). The Committee may receive information about operational activities, but does not have review or approval authority over activities carried out in furtherance of established policies. The Chief Executive Officer of Utilities (“Chief Executive Officer”) is solely responsible for the definition and implementation of activities and subsidiary policies as needed to carry out policy direction adopted by the Utilities Board. Questions as to whether those activities are consistent with established policies will be determined by the Utilities Board.

(c) The Utilities Board will direct the Committee to study specific issues or policies and provide recommendations to the Utilities Board, as appropriate. Assignments will include timelines that require completion prior to general municipal elections involving City Council Members.

UPAC must complete the assignment in the timeline approved by the Utilities Board.

(d) The Chair or Vice Chair of the Utilities Board will serve as a liaison between UPAC and Utilities Board. The UPAC liaison will be the Utilities Board’s direct point of contact with UPAC, communicating direction from Utilities Board to UPAC and providing guidance and support to UPAC so that Board expectations are met.

**RULE 2. - COMMITTEE  
COMPOSITION AND CONDUCT**

(a) The Committee is composed of seven regular members appointed by the Utilities Board for staggered terms. All members are limited to a maximum of three consecutive three-year terms. Up to two Committee members may reside outside of the corporate limits of the City of Colorado Springs, so long as either (1) the member resides within Utilities service area for at least one utility service, or (2) the member resides in El Paso County and works at business or organization premises located inside the corporate limits of the City of Colorado Springs.

(b) The Committee, when considering all of its members, shall comprise balanced professional, business, and community perspectives.

(c) Members of the Committee serve without compensation for their services but may be reimbursed for actual expenses, in accordance with Utilities policies and procedures.

(d) Committee members are subject to the provisions of the City of Colorado Springs Code of Ethics (City Code §§ 1.3.101 *et seq.*), and should employ independent objective judgement in providing policy advice and recommendations to the Utilities Board. Without limitation of the foregoing, the following Rules of Conduct shall apply to Committee members:

(1) If a Committee member chooses to seek employment with Utilities, that member shall notify the Chief Executive Officer and the Utilities Board of the application, and the member applying for employment shall be excused from attending Committee meetings and participating in Committee deliberations while the employment application is pending. The Utilities Board may authorize an alternate member (see Rule 2 (i) for description of an alternate member) to serve in place of the regular member who is applying for employment with Utilities. If the Committee member is not selected for employment with Utilities, that member shall be reinstated to full Committee participation. If the Committee member accepts employment with Utilities, the Committee member promptly shall resign from the Committee.

(2) Committee members are not precluded from offering or providing products and services to Utilities under Utilities' applicable procurement procedures or from offering or supplying products or services to contractors providing products or services to Utilities.

However, Committee members should not offer or contract to supply products or services to Utilities or Utilities' contractors that conflict with the Committee member's responsibilities as a member of UPAC. Committee members shall not use their position on UPAC to influence the procurement decisions of Utilities or its contractors. In the event any Committee members desires to provide products or services to Utilities or a contractor for Utilities, that Committee member shall notify the Chief Executive Officer of the proposed offering. The Chief Executive Officer shall consult with the Chair of the Utilities Board concerning the proposed offering. Provided that the Chief Executive Officer, after consultation with the Chair of the Utilities Board, determines that the proposed products or services offering does not conflict with the Committee member's responsibilities, the Committee member may proceed with offering the products or services and may contract to provide such products or services to Utilities if selected under Utilities' applicable procurement procedures or to a contractor for Utilities. If the Chief Executive Officer, after consultation with the Chair of the Utilities Board, determines that the proposed products or services offering does conflict with the Committee member's responsibilities, the Committee member may choose to resign from the Committee and to continue to pursue the offering or the Committee member may choose to

refrain from pursuing the offering, in which case the Committee member may continue participation on the Committee. This restriction shall apply to Committee members and any company or organization employing the Committee member.

(3) In the event any Committee member has questions or concerns under the City of Colorado Springs Code of Ethics about the propriety of any action the Committee member is contemplating, the Committee member shall contact ~~an attorney in~~ the City Attorney's Office ~~Utilities Division or the City Attorney~~ for guidance.

(e) Regular attendance of Committee members is expected in order for the Committee to function effectively.

(f) Upon recommendation by the Committee, the Utilities Board may remove any members of the Committee who fail to attend three or more regular meetings each year.

(g) Upon request of the Chair of the Committee or the Chief Executive Officer, the Utilities Board may remove any member who violates ethical or confidentiality requirements.

(h) Should a vacancy exist for retirement, resignation, removal, etc., the Utilities Board will appoint an eligible replacement member to fill the remaining term.

(i) The Utilities Board may appoint alternate members of the Committee to gain experience and observe the Committee's deliberations and actions. Alternates may participate in the discussion of the Committee; shall not

participate in Executive Sessions; shall not vote in any matter as an alternate; and shall not substitute for a regular Committee member except when authorized by the Utilities Board under the provisions of Rule 2 (d). For this reason, alternate members shall also comply with the requirements of Rule 2 (d) (1)-(3). Alternate members will be eligible for appointment by the Utilities Board to the Committee as a regular member whenever a vacancy occurs for which the alternate member is qualified.

### **RULE 3. - COMMITTEE OFFICERS**

(a) The officers of the Committee are the Chair and Vice-Chair. The Chair shall be elected by a majority vote of the Committee members following nomination(s) by a member or members of the Committee, which nomination(s) must be seconded. The Vice-Chair shall be elected in the same manner as the Chair. If a nominee fails to get elected, nominations shall be reopened. The Chair and Vice-Chair shall have a voice and shall vote in the selection of the officers of the Committee. Committee members shall not serve more than two consecutive years as Chair and not more than two consecutive years as Vice-Chair. The Committee shall elect the Chair and Vice-Chair for the next calendar year at the Committee's December meeting of the previous year.

(b) The Chair shall chair all meetings of the Committee and shall be the spokesperson for the Committee in communicating any recommendations to the Utilities Board. The Vice-Chair shall serve as the Chair when the Chair is absent or unavailable. If both the Chair and Vice-Chair are absent from a regular

or special meeting, the Committee shall designate its most senior member present who is willing to serve to chair that meeting, or in case there are multiple members present with equal seniority willing to serve, the Committee shall designate a chair by majority vote of members present.

(c) The Chief Executive Officer or a designee shall serve as secretary to the Committee.

#### **RULE 4. - SUB-COMMITTEES**

The Chair will appoint Committee members to such sub-committees as are established from time to time by the Committee to assist in carrying out its responsibilities. If a sub-committee consists of three or more members, Rule 5 shall apply.

#### **RULE 5. - MEETINGS**

(a) The Committee shall designate the times and expected duration of regular meetings by motion and majority vote as necessary from time to time.

(b) The place of the regular meetings of the Committee shall be specified in the meeting notice and the agenda.

(c) Special meetings of the Committee may be held at such time and place as stated in the notice of the meeting. The Chair may, or, upon the request of three Committee members shall, call special meetings of the Committee by notice to each of the Committee members in writing, which notice shall state the purpose for which the meeting is called. The notice shall be served at least 24 hours prior to the time of such meeting. The notice shall be served personally or

by email to each Committee member at the email address shown of the secretary's records.

(d) A majority of the regular members of the Committee shall constitute a quorum.

(e) The Committee by majority vote of members present may recess a regular or special meeting to a time specified in the motion therefore.

(f) Public notice of all regular and special meetings of the Committee shall at all times meet governing legal requirements.

(g) The format of the agenda, order of business, designation of agenda topics therein and the Committee's annual planning calendar shall be determined by the Committee.

(h) The Chief Executive Officer shall be responsible for preparation of a draft agenda for each regular Committee meeting. The draft agenda shall be reviewed by the Chair who shall have final authority as to the items included on the agenda.

(i) Agendas with attachments for regular meetings will be distributed to Committee members by 5:00 p.m. on Wednesday of the week preceding each regular meeting.

(j) Committee members may request agenda items be included on an agenda by contacting the Chief Executive Officer's Office or the Manager of Strategic Planning and Governance ~~or the UPAC liaison~~. The cut-off time for requesting additional agenda items for regular meetings shall be 5:00 p.m. on Tuesday of the week preceding the

regular meeting. For good cause, the Chair may authorize additional agenda items to be placed on the agenda for an upcoming meeting after the standard deadline provided that public notice of such additional agenda item(s) is given in accordance with legal requirements and provided notice thereof is given to Committee members in the same manner as required for a notice of special meeting under Rule 5 (c).

(k) At all regular and special meetings, the Chair, acting chair, Chief Executive Officer, or Chief Executive Officer's designee shall announce agenda items prior to Committee consideration of each item.

(l) Any Committee members desiring to speak or to make a motion shall address the Chair as "Mr. (or "Madam") Chair," and the Chair shall thereupon pronounce the name of the Committee member entitled to the floor. Committee members addressing the Committee shall confine themselves to the issues being discussed.

(m) A Committee member's attendance at a Committee meeting may be achieved electronically and/or telephonically with the prior approval of the Committee Chair.

#### **RULE 6. - CUSTOMER AND PUBLIC COMMENT**

(a) Committee meetings are generally expected to involve discussion between the Committee and Utilities staff.

(b) At the discretion of the Chair, or the majority of the Committee members present, customers and members of the public will be allowed to comment or ask questions concerning items

discussed at regular meetings or concerning matters discussed at special meetings. Comments or questions by individuals will be limited to ~~five~~three minutes each, and all customer or public comments will not exceed ~~twenty~~thirty minutes on any agenda item unless time is extended by the Chair or majority of the Committee members present.

(c) Customers and members of the public may address the Committee in person, electronically, or telephonically.

#### **RULE 7. - COMMITTEE ACTIONS**

(a) The Committee may take formal action only by motion and vote. However, no Committee action can be taken on any such matter until it is placed on an agenda for a regular meeting or is a subject of a special meeting.

(b) Motions shall be approved by the majority vote of the quorum, except that the affirmative votes of four members of the Committee are required for adoption or revision of Committee recommendations to the Utilities Board including adoption or revision of the Bylaws. If the Committee does not unanimously agree to a recommendation supported by at least four members of the Committee, dissenting members shall have the right to communicate their views to the Utilities Board as an addendum to the recommendation of the Committee.

(c) A voice vote will be used for all Committee items requiring a vote, with any dissenting votes or abstentions recorded in the minutes of the Committee meeting at the request of any Committee member. An additional roll

call vote may be used as necessary for clarity or in the event a Committee member is participating electronically and/or telephonically.

#### **RULE 8. - MOTIONS PROCEDURES**

(a) When a motion is made and seconded, it may be restated by the Chair or by the Chief Executive Officer before a debate and again before the final vote.

(b) ~~Roberts Rules of Order~~ Parliamentary Law and Practice for Non-profit Organizations shall govern the consideration of motions and transaction of business by the Committee.

#### **RULE 9. - MINUTES AND RECORDINGS**

(a) The Chief Executive Officer will be responsible for keeping minutes of all Committee meetings. Minutes of the previous regular meeting and any special meetings occurring in the previous month shall be included in each Committee member's agenda packets for distribution prior to each regular meeting and the Committee will review and approve the minutes as part of its regular meeting agenda.

(b) Copies of the minutes shall also be provided to members of the Utilities Board.

(c) All regular and special Committee meetings will be recorded, and the audio recordings will be archived.

(d) Minutes of Committee meetings shall be archived and then posted on Colorado Springs Utilities' website, for a

minimum of three (3) years, in order to be available for public access.

#### **RULE 10. - EXECUTIVE SESSION PROCEDURES**

(a) The Chief Executive Officer and an attorney in the City Attorney's Office Utilities Division shall prepare the agenda for an Executive Session of the Committee meeting. The agenda shall include those items that may be discussed in closed session.

(b) In compliance with the Colorado Open Meetings Law, prior to convening an Executive Session, the Chair shall announce the general topics of the Executive Session as set forth below. If two thirds of the Committee members present consent to an Executive Session, the item may be discussed in a closed Executive Session. If two thirds of Committee members do not consent to an Executive Session, the items may be discussed in open session or withdrawn.

(c) No adoption of any proposed Committee action, recommendation or policy advice to the Utilities Board shall occur in Executive Session. However, Committee members may receive information and provide direction in Executive Session for consideration as provided by law in the following areas as they affect the responsibilities of the Committee:

(1) Purchase, acquisition, lease, transfer, or sale of any real, personal or other property interests.

(2) Conferences with the City Attorney or other attorneys for Utilities, for the purposes of

receiving legal advice on specific legal questions, issues or matters.

(3) Matters required to be confidential by federal or state law or rules and regulations.

(4) Specialized details of security arrangements or investigations.

(5) Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators.

(6) Consideration of any documents protected by mandatory nondisclosure provisions of the Colorado Open Records Act or other information which is considered confidential or proprietary and, thus, would not be subject to the disclosure requirements of the Colorado Open Records Act.

(d) All discussions and documents provided in Executive Session are confidential and proprietary information, and Committee members shall not use such confidential information for purposes other than their responsibilities as a Committee member. Further, Committee members shall not release any confidential or proprietary information to any third party without the express consent of the Chief Executive Officer.

(e) To the extent required by law, executive sessions will be recorded and the audio recordings will be archived. All such recordings shall be confidential records.

(f) Nothing herein shall restrict the Committee from deciding to hold an Executive Session regarding any other agenda item provided such decision meets the criteria set forth in subparagraph 10 (c) above and the required notice has been provided.

(g) Prior to entering into any Executive Session, Committee members participating electronically or telephonically shall ensure that no other individual not authorized to participate in the Executive Session is present or able to hear the matter discussed as part of the Executive Session.

#### **RULE 11. - EXPENSE REIMBURSEMENT**

(a) Committee members and alternates are encouraged to participate in a variety of educational and training programs in order to make them more experienced in matters involving the utility industry and to gain insight ~~into~~ developing trends in the industry. Generally, Committee members and alternates should attend educational and training programs pertinent to their area of expertise or customer segment. At least once per year, the Committee shall review available educational and training opportunities to determine which activities would assist Committee members and alternates in participating in the work of the Committee.

(b) Expenses incurred by Committee members and alternates for educational and training programs relating to their duties as Committee members and alternates can be reimbursed. Such reimbursements shall be in accordance with guidelines established in the current

Utilities policies and procedures and these Bylaws.

(c) The appropriate Staff of Colorado Springs Utilities will coordinate necessary travel arrangements and will approve reimbursement requests.

**RULE 12. - ADOPTION AND MODIFICATION OF BYLAWS**

(a) Adoption or modification of Committee Bylaws requires approval of the Utilities Board.

(b) Committee members or the Chief Executive Officer can suggest modifications to Bylaws by placing the matter as an agenda item at a regular Committee meeting.

Rule 13. Application of Board Bylaws and City Council Rules

(a) In the event these UPAC Bylaws do not address a matter or issue, and such matter or issue is addressed by the Utilities Board Bylaws, the Committee shall apply the Utilities Board Bylaws when considering such matter or issue. In the event neither these UPAC Bylaws nor the Utilities Board Bylaws address a matter or issue, and such matter or issue is addressed by the Rules and Procedures of City Council, the Committee shall apply the Rules and Procedures of City Council when considering such matter or issue.

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# Board Memo Agenda Item

## Staff Report

<b>Date:</b> (Date of Utilities Board Meeting)	June 18, 2024		
<b>To:</b>	Utilities Board		
<b>From:</b>	Travas Deal, Chief Executive Officer		
<b>Subject:</b>	Utilities Board Bylaws Update		
<b>NARRATIVE:</b>			
<b>Desired Action:</b> Choose only one	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Discussion <input type="checkbox"/> Information		
<b>Executive Summary:</b>	<p>The Utilities Policy Advisory Committee (UPAC) is a Utilities Board directed advisory committee that reviews, analyzes, and provides recommendations to the Utilities Board on specific issues or policies. To provide consistency with changes being proposed in the Utilities Policy Advisory Committee (UPAC) bylaws, language mirroring the establishment of a liaison from the Utilities Board is being proposed.</p> <p>The language states: "The Chair or Vice Chair of the Utilities Board will serve as a liaison between UPAC and Utilities Board. The UPAC liaison will be the Utilities Board's direct point of contact with UPAC, communicating direction from Utilities Board to UPAC and providing guidance and support to UPAC so that Board expectations are met."</p>		
<b>Benefits:</b>	These changes are intended to improve assignment clarity for UPAC and establish boundaries on assignment timeline to maximize the effectiveness of UPAC.		
<b>Board Policy:</b> <small>If this impacts one of the board policies, indicate that here.</small>	Operational Resources P-5		
<b>Cost / Budget:</b> <small>Include the projected cost or budget here.</small>	N/A		
<b>Affected Parties:</b> <small>This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.</small>	Utilities Board members, Utilities Policy Advisory Committee members, Colorado Springs Utilities staff and customers		
<b>Alternatives:</b>	Do not approve or modify changes to Utilities Board bylaws.		
<b>Submitter:</b>	Bethany Schoemer	<b>Email Address:</b>	bschoemer@csu.org
<b>Division:</b>	Administration and Human Resources	<b>Phone Number:</b>	719-668-3811
<b>Department:</b>	Public Affairs	<b>Date Submitted:</b>	June 3, 2024
<b>SPG Staff Use Only:</b>	Consent Calendar <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Item Number 9

ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING.



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# Utilities Board Bylaws Update

Bethany Schoemer, Strategic Planning and Governance

# Proposed Bylaw Changes



The Chair or Vice Chair of the Utilities Board, as determined by the Chair, will serve as a liaison between Utilities Board and the Utilities Policy Advisory Committee (UPAC). The UPAC liaison will be the Utilities Board's direct point of contact with UPAC, communicating direction from Utilities Board to UPAC and providing guidance and support to UPAC so that Board expectations are met.

# Next Steps

- Approve or disapprove the proposed change.



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**UTILITIES BOARD**

**BYLAWS**

Originally Adopted: May 21, 1997  
Revised and Approved: May 17, 2023

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**COLORADO SPRINGS UTILITIES  
UTILITIES BOARD  
BYLAWS**

**RULE 1. - BOARD OF DIRECTORS**

(a) The City Council serves as the Board of Directors of Colorado Springs Utilities pursuant to Section 6-40(a) of the City Charter.

(b) The authority of the Utilities Board is set forth in Article 1 of Chapter 12 of the Code of the City of Colorado Springs.

(c) The Board's job description and details of the Policy Governance process utilized by the Board in carrying out its responsibilities are contained in the Utilities Board Policies.

**RULE 2. - BOARD OFFICERS AND DUTIES**

(a) The officers of the Utilities Board are the Chair, Vice Chair and Secretary. The Chair and Vice Chair of the Utilities Board shall be elected by and from the members of the Utilities Board. The Chair of the Utilities Board shall have a voice and vote in the Utilities Board's proceedings. The Chair of the Utilities Board shall be recognized as leader of the Utilities Board. The Utilities Board will select the Utilities Board member to serve as Chair of the Utilities Board and the Utilities Board member to serve as Vice Chair of the Utilities Board by majority vote.

(b) Terms of office for the Utilities Board Chair and the Utilities Board Vice-Chair shall be two years. At its first regular meeting on or after the third Tuesday in April of each odd-numbered year, and biennially thereafter, the Utilities Board

shall elect one of its members as Chair of the Utilities Board and one of its members as Vice Chair of the Utilities Board.

(c) The Chair of the Utilities Board, or in the Chair's absence, the Vice Chair of the Utilities Board, shall chair all regular or special meetings of the Utilities Board. In the absence of both the Chair of the Utilities Board and Vice Chair of the Utilities Board, the Utilities Board member with the most seniority present at the meeting shall chair the meeting and perform the duties of the Chair at the meeting. If two or more members have equal seniority, the Utilities Board shall select one of the most senior Utilities Board members to chair the meeting and perform the duties of the Chair at the meeting.

(d) The Chair of the Utilities Board may be removed from the office of Chair of the Utilities Board, but not as a Utilities Board member, by a vote of at least five (5) members of the Utilities Board.

(e) The Chief Executive Officer, or the Chief Executive Officer's designee, shall serve as Secretary to the Utilities Board.

~~(e)~~(f) The Chair or Vice Chair of the Utilities Board, as determined by the Chair, will serve as a liaison between Utilities Board and the Utilities Policy Advisory Committee (UPAC). The UPAC liaison will be the Utilities Board's direct point of contact with UPAC, communicating direction from Utilities Board to UPAC and providing guidance and support to UPAC so that Board

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expectations are met.

### **RULE 3. - BOARD COMMITTEES**

(a) Colorado Springs Utilities Board has established four standing Committees of the Board (Finance Committee, Strategic Planning Committee, Personnel Committee, and the Program Management Review Committee). The Board may establish other Committees on an ad hoc basis and only by a vote of the Utilities Board. The Board will establish the purpose and authority of each Committee e. Committees and are authorized to provide information and recommendations to the Utilities Board but do not have approval authority over operations or activities.

(b) Committee members are appointed from among members of the Utilities Board by the Utilities Board Chair and serve two-year terms concurrent with the municipal election cycle. Committee Chairs are appointed from among members of the Board Committees by the Utilities Board Chair and serve a two-year term concurrent with the municipal election cycle. Committees will have a minimum of three Board members.

(c) In the absence of the Chair during any Committee meeting, the Committee may designate a Chair. Regular attendance of members at Committee meetings is expected in order for the Committee to function effectively. Committee and Board members may be removed by the Utilities Board Chair.

(d) Committees will meet as often as may be deemed necessary or appropriate.

(e) Public notice of all meetings of the Committee shall meet governing legal requirements. The notice shall be served at

least 24 hours prior to the time of such meeting. Copies of the agendas with attachments for meetings will be distributed to Committee members 24 hours prior to the time of such meeting.

(f) The Chief Executive Officer will provide Utilities staff support for Committees. The Chief Executive officer or designee will be responsible for preparing draft agendas for review and approval by the Committee and for keeping minutes of all Committee meetings. Copies of the minutes shall also be provided to members of the Utilities Board.

(g) At the discretion of the Committee or the majority of the Committee members present, public comment will be taken at meetings. Individual comments are limited to three minutes each unless time is extended by the Committee or majority of the Committee members present.

(h) A Committee member's attendance at a Committee meeting may be achieved electronically and/or telephonically with the approval of the Committee Chair.

### **RULE 4. - MEETINGS**

(a) The regular meetings of the Utilities Board shall be held at 1:00 pm on the Wednesday following the third Tuesday of each month, unless another time for a specified regular meeting has been approved by the Chair or the Utilities Board and notice of the changed time for the specified regular meeting has been given in accordance with subsection (f) of this rule to the extent practical under the circumstances. In the event the time of a specified regular meeting is changed, the Chair or the Utilities Board, as appropriate, shall also direct any change in the times for agenda preparation

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and distribution as necessary under the circumstances.

(b) The regular meetings of the Utilities Board shall be held in the Blue River Board Room, 5th Floor, Plaza of the Rockies South Tower, 121 S. Tejon Street, Colorado Springs, Colorado, unless another location for a specified regular meeting has been approved by the Chair or the Utilities Board and the substitute location for a specific regular meeting is specifically described in the agenda for that specific meeting.

(c) Five members of the Utilities Board shall constitute a quorum, but in the absence of a quorum, members present may adjourn the meeting to a later date or may attend to any matters not requiring a quorum. For the purpose of establishing a quorum, the Mayor shall not be counted as one of the five necessary members.

(d) Special meetings of the Utilities Board may be held at such time and place as stated in the notice of the meeting. The Chair may, or, upon the request of three Utilities Board members, shall call special meetings of the Utilities Board by notice to each of the Utilities Board members in writing, which notice shall state the purpose for which the meeting is called. The notice shall be served at least 24 hours prior to the time of such meeting. The notice shall be served personally or by email to each Utilities Board member at the email address shown on the Secretary's records.

(e) The Utilities Board by majority vote may recess a regular or special meeting to a time specified in the motion therefore.

(f) Public notice of all regular and special meetings of the Utilities Board shall at all times meet governing legal requirements. Copies of the complete

agenda packet including all attachments will be posted on [csu.org](http://csu.org) no later than one week before the meeting is to commence.

(g) The Board shall determine what monthly agenda topics are required as part of its annual planning calendar.

(h) The general format of monthly agendas shall be determined by the Board.

(i) The Chief Executive Officer shall be responsible for preparation of a draft agenda for each regular Utilities Board meeting. The draft agenda shall be reviewed by the Chair who shall have final authority as to items to be included on the monthly agenda in addition to the items required to be considered by the Boards' annual planning calendar.

(j) Agendas with attachments for regular meetings will be distributed to Utilities Board members by 5:00 p.m. on Wednesday of the week preceding each regular meeting.

(k) Utilities Board members may request agenda items by contacting the Chief Executive Officer's Office or the Manger of Strategic Planning and Governance or the Utilities Board Administrator. The cut-off time for requesting additional agenda items for regular meetings shall be 5:00 p.m. on Monday of the week preceding the regular meeting. For good cause, the Chair may authorize additional action or executive session items to be placed on the agenda for an upcoming meeting after this deadline provided that public notice of such additional action or executive session items is given in accordance with legal requirements and provided notice thereof is given to Board members in the same manner as required for a notice of special meeting under Rule (4)(d) above.

(l) As part of General Board Discussion, any Board member may raise any matter of concern relating to Utilities for discussion. However, no Board action can be taken on any such matter until it is placed on an agenda for a regular meeting or is a subject of a special meeting. Expense reimbursement matters may be discussed as part of General Board Discussion.

(m) Any Board members desiring to speak or to make a motion shall address the Chair as “Mr. (or Madam) Chair”, and the Chair shall thereupon pronounce the name of the Board member entitled to the floor. Board members addressing the Board shall confine themselves to the issues being discussed.

(n) A Board member’s presence at a Utilities Board meeting may be achieved electronically and/or telephonically with the approval of the Board Chair. Except in the event of extenuating circumstances, requests to attend a Utilities Board meeting electronically and/or telephonically must be submitted to the Board Chair no less than 7 days prior to a regular meeting of the Utilities Board, or no less than 12 hours prior to any special meeting of the Utilities Board.

#### **RULE 5. - CUSTOMER AND PUBLIC COMMENT**

(a) At each regular Utilities Board meeting, customers and members of the public shall be allowed to comment on any matters not on the current agenda and that are not repetitious, during the Customer Comment period. Individuals will be allowed a maximum of three (3) minutes, and the Customer Comment period will not exceed thirty minutes at each regular meeting. Time limits will be strictly

enforced by Chair of the Utilities Board, unless the Chair agrees to extend the maximum time.

(b) At the discretion of the Chair, or the majority of Utilities Board members present, customers and members of the public will be allowed to comment or ask questions concerning other agenda items at regular meetings or concerning matters discussed at special meetings. Such comments or questions will be limited to three (3) minutes each, and will not exceed thirty minutes on any agenda item.

(c) Customers and members of the public may address the Utilities Board in person, electronically, or telephonically.

#### **RULE 6. - BOARD ACTIONS**

(a) Provided a quorum is present, the Utilities Board may take action only by resolution or motion.

(b) Resolutions or motions shall be approved by the majority vote of the members of the Utilities Board present, except that the affirmative votes of five members of the Utilities Board are required for adoption or revision of the Bylaws, adoption or revision of written Board Policies, and approval of any motion or resolution providing for the expenditure of money.

(c) A voice vote will be used for all Board items requiring a vote, with full details recorded in the minutes of the Utilities Board meeting. An additional roll call vote may be used as necessary for clarity or in the event a Board member is participating electronically and/or telephonically.

(d) Utilities Board resolutions shall be signed by the Chair and the Chief Executive Officer.

#### **RULE 7. - MOTIONS**

(a) When a motion is made and seconded, it may be restated by the Chair or by the Chief Executive Officer before a debate and again before the final vote. Any member may demand that a motion be reduced to writing. A motion may not be withdrawn by the mover without the consent of the second.

(b) When an item is before the Utilities Board, no motion shall be entertained except as listed according to priority (highest to lowest):

(1) Motion to Adjourn - Requires a second, is not debatable, is not amendable, and requires a majority vote of those present.

(2) Motion to Recess - Requires a second, is not debatable, is amendable only as to time and duration of recess, and requires a majority vote of those present.

(3) Motion to Postpone Temporarily - Requires a second, is not debatable, is not amendable, and requires a majority vote of those present.

(4) Motion to Close Debate - Requires a second, is not debatable, is not amendable, and requires a 2/3 vote of those present.

(5) Motion to Limit or Extend Debate - Requires a second, is debatable as to type and time of limitations, is amendable as to time and type of

limitations, and requires a 2/3 vote of those present.

(6) Motion to Postpone to a Definite Time - Requires a second, is debatable as to reasons for postponement and date of reconsideration, is amendable as to date of reconsideration, and requires a majority vote of those present.

(7) Motion to Refer - Requires a second, is debatable as to the referral, is amendable as to the referral, and requires a majority vote of those present.

(8) Motion to Amend - Requires a second, is debatable unless applied to an undebatable motion, is amendable, and requires a majority vote of those present.

(9) Motion to Postpone Indefinitely - Requires a second, is debatable, is not amendable, and requires a majority vote of those present.

(10) Motion to Reconsider - Requires a second, is debatable, is not amendable, and requires a majority vote of those present. This motion can be made at the same meeting or at a meeting other than the meeting at which the action was taken. If made at a meeting other than the meeting at which the action was taken, all members of the Utilities Board must be given at least seven days written notice by the Chief Executive Officer that a named Board member is going to move to reconsider Item No. \_ of the formal Utilities Board Agenda of (Date). If the motion to reconsider is voted upon and approved, no action shall be taken on the item

reconsidered until the next regular Utilities Board meeting.

(11) Main Motions - Requires a second, is debatable, is amendable, requires a majority vote of those present.

(c) In making any of the above motions, the motion maker may not interrupt another speaker.

### **RULE 8. - SPECIAL MOTIONS**

(a) These motions must be disposed of immediately:

(1) Motion Objecting to Consideration - This motion must be made immediately after an item is called to the attention of the Utilities Board by the Chief Executive Officer. This motion enables the Utilities Board to avoid a main motion that would be undesirable to consider at the time. It does not require a second, is not debatable, is not amendable, and requires a 2/3 vote of those present.

(2) Motion to Withdraw - A mover of any motion may withdraw the motion as a matter of right so long as the consent of the second is first obtained.

(3) Motion to Suspend Rules - This motion applies to all procedural rules herein. The purpose of this rule is to enable the Utilities Board to set aside one or more of its procedural rules that would otherwise prevent consideration of a certain action. A motion to suspend rules suspends only those rules which specifically interfere with the consideration of the particular action involved. The rules are suspended only temporarily and are automatically reactivated when the proposed action has

been considered. Voting or notice requirements set forth in these Bylaws and rules set forth in the City Charter, City Code, Utilities tariffs or written Board Policies may not be altered by suspending the rules. A motion to suspend rules is not a debatable motion and may not be amended. It requires a majority vote of the Utilities Board members present.

### **RULE 9. - MINUTES AND RECORDINGS**

(a) The Chief Executive Officer will be responsible for keeping minutes of all Utilities Board meetings. Minutes of the previous regular meeting and any special meetings occurring in the previous month shall be included in the Utilities Board member's agenda packets for distribution prior to each regular meeting.

(b) All regular and special Utilities Board meetings will be recorded, and the audio recordings will be archived.

(c) Minutes of the Utilities Board shall be archived and then posted on Colorado Springs Utilities' website, for a minimum of three (3) years, in order to be available for public access.

### **RULE 10. - EXECUTIVE SESSION PROCEDURES**

(a) The Chief Executive Officer and the City Attorney's Office Utilities Division Chief shall prepare the agenda for the Executive Session of the Utilities Board meeting. The agenda shall include those items that may be discussed in closed session.

(b) In compliance with the Colorado Open Meetings Act, prior to convening an

Executive Session, the Chair shall announce the general topics of the Executive Session as set forth below. The Chair shall poll Board members, and, upon consent of two thirds of the Board members present, not including the Mayor if he or she is present, may hold a closed Executive Session. The Mayor may attend an Executive Session, but must comply with Rule 13 when in attendance at an Executive Session. If consent to the closed Executive Session is not given, the item may be discussed in open session or withdrawn from consideration.

(c) No adoption of any proposed policy, position, resolution, rule, regulation or formal action shall occur in Executive Session which is not open to the public. However, Utilities Board members may receive information and provide direction, as provided by law in the following areas:

(1) Purchase, acquisition, lease, transfer, or sale of any real, personal or other property interests.

(2) Conferences with the City Attorney or other attorneys for Utilities, for the purposes of receiving legal advice on specific legal questions, issues or matters.

(3) Matters required to be confidential by federal or state law or rules and regulations.

(4) Specialized details of security arrangements or investigations.

(5) Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators.

(6) Personnel matters except if the employee who is subject of the

session has requested an open hearing, or if the personnel matter involves more than one employee, all the employees have requested an open meeting.

(7) Consideration of any documents protected by mandatory nondisclosure provisions of the Colorado Open Records Act or other information which is considered confidential or proprietary and, thus, would not be subject to disclosure requirements of the Colorado Open Records Act.

(d) Executive Sessions will be electronically recorded, and the audio recordings will be archived. All such recordings shall be privileged and confidential records.

(e) Any items discussed in Executive Session requiring formal Utilities Board or Council consideration ordinarily will be put on the next regular Utilities Board or City Council meeting agenda as a Utilities Business item.

(f) Nothing herein shall restrict the Board from deciding to hold an Executive Session regarding any other agenda item provided such decision meets the criteria set forth in sub paragraph 10 (c) above.

(g) Prior to entering into any Executive Session, Board members participating electronically or telephonically shall ensure that no other individual not authorized to participate in the Executive Session is present or able to hear the matter discussed as part of the Executive Session.

**RULE 11. - EXPENSE REIMBURSEMENT**

(a) Utilities Board may authorize reimbursement of expenses incurred by its members for travel and educational purposes relating to their duties as Utilities Board members. Such reimbursements shall be in accordance with Colorado Springs Utilities then current travel policies. Any conflicts or issues shall be resolved by the Utilities Board.

(b) No vote of Utilities Board or of City Council shall be required to authorize such reimbursements.

(c) The appropriate Staff of Colorado Springs Utilities will coordinate necessary travel arrangements and will process reimbursement requests.

**RULE 12. - MODIFICATION OF BYLAWS**

(a) Utilities Board members can suggest modifications to Bylaws by placing the matter as an agenda item at a regular Utilities Board meeting.

(b) The Chief Executive Officer may suggest Bylaw revisions, but the decision to bring any such matters to a vote will be reserved to the Utilities Board.

**RULE 13. - ROLE OF THE MAYOR ON THE UTILITIES BOARD**

The Mayor shall have the right, but not the obligation, to attend Utilities Board meetings. Under City Charter Art. 6- 40(a), which states that the Mayor is “an ex officio and non-voting member” of the Utilities Board, he or she does not have the right to vote as part of the Utilities Board; additionally, the Mayor shall not make or

second any motions as a member of the Utilities Board. The Mayor may participate freely, within the procedural rules of the Utilities Board, in discussions, asking questions, and providing comments. Additionally, the Mayor may attend Executive Sessions of the Utilities Board in accordance with Rule 10.

**RULE 14. – APPLICATION OF CITY COUNCIL RULES**

In the event these Bylaws do not address a matter or issue, and such matter or issue is addressed by the Rules and Procedures of City Council, the Utilities Board shall apply the Rules and Procedures of City Council when considering such matter or issue.

# Board Memo Agenda Item Staff Report

<b>Date:</b> <small>(Date of Utilities Board Meeting)</small>	June 18, 2024		
<b>To:</b>	Utilities Board		
<b>From:</b>	Travas Deal, Chief Executive Officer		
<b>Subject:</b>	UPAC Assignment Scope		
<b>NARRATIVE:</b>			
<b>Desired Action:</b> <small>Choose only one</small>	<input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Information		
<b>Executive Summary:</b>	<p>The Utilities Policy Advisory Committee (UPAC) is a Utilities Board directed advisory committee that reviews, analyzes, and provides recommendations to the Utilities Board on specific issues or policies.</p> <p>The Utilities Board has the authority to direct UPAC to study specific issues or policies and provide recommendation to the Utilities Board. UPAC's last assignment was completed in January 2024.</p> <p>At the June 5, 2024, UPAC meeting, Chair Donelson brought forward a potential topic for UPAC's next assignment. The Utilities Board is responsible for approving the scope, timeline, and topic of a future assignment.</p>		
<b>Benefits:</b>	UPAC's recommendations provide valuable insight for the Utilities Board to consider on specific policy or research-based issues.		
<b>Board Policy:</b> <small>If this impacts one of the board policies, indicate that here.</small>	Operational Resources P-5		
<b>Cost / Budget:</b> <small>Include the projected cost or budget here.</small>	N/A		
<b>Affected Parties:</b> <small>This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.</small>	Utilities Board members, Utilities Policy Advisory Committee members, Colorado Springs Utilities staff and customers		
<b>Alternatives:</b>	N/A		
<b>Submitter:</b>	Bethany Schoemer	<b>Email Address:</b>	bschoemer@csu.org
<b>Division:</b>	Administration and Human Resources	<b>Phone Number:</b>	719-668-3811
<b>Department:</b>	Public Affairs	<b>Date Submitted:</b>	June 6, 2024
<b>SPG Staff Use Only:</b>	Consent Calendar <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Item Number 10

ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING.



Colorado Springs Utilities  
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# UPAC Assignment Scope

June 18, 2024

# Nuclear Power Research Project

# Purpose

To examine nuclear power options for Colorado Springs Utilities



# Questions to examine:

1. What should Springs Utilities be doing to prepare for nuclear power generation in the future?
2. What is the state of the technology (SMRs, etc.)?
3. What is the cost range for different options? Should cost be seen as prohibitive?
4. What are the environmental pros and cons, including waste disposal and emissions?
5. Are the water constraints in Colorado a prohibitive factor?
6. What is the regulatory environment in Colorado and nationally?

# Questions to examine continued:

7. Are there federal or other funding or research opportunities that Springs Utilities should investigate?
8. How long does permitting take?
9. What is being done in the southwest and Rocky Mountain region – where similar water limitations and climate and altitude are found (i.e. projects in Wyoming)?
10. What are the opportunities for partnerships and collaboration?
11. What is recommended for the frequency of UPAC re-examining this topic, including for the EIRP?
12. Based on this assignments' findings, what areas need further evaluation by UPAC?

# Timeline

- The assignment findings must be presented no later than the March 2025 Utilities Board meeting.

# Undergrounding Policy

# Next Steps

- A vote approving the next UPAC assignment

# Board Memo Agenda Item Staff Report

<b>Date:</b> (Date of Utilities Board Meeting)	June 18, 2024
<b>To:</b>	Utilities Board
<b>From:</b>	Travas Deal, Chief Executive Officer
<b>Subject:</b>	2024AB Bond Ordinance

## NARRATIVE:

<b>Desired Action:</b> Choose only one	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Discussion <input type="checkbox"/> Information
<b>Executive Summary:</b>	<p>The Utilities Board discusses Colorado Springs Utilities' intended financing plans each year prior to City Council review and approval via ordinance.</p> <p>In August, Springs Utilities anticipates raising up to \$325 million in new money debt to fund the debt-backed portion of the enterprise's upcoming capital plan from September 2024 until roughly September 2025.</p> <p>Additionally, Springs Utilities expects to issue refunding bonds for all or portions of the 2014A-1 and 2014A-2 series (\$102.1 million in total currently outstanding) at favorable net present value cost savings to the enterprise if market conditions are favorable at issuance.</p>
<b>Benefits:</b>	The 2024A series would provide the required capital to fund the debt-backed portion of Colorado Springs Utilities' upcoming capital program. Additionally, the 2024B saves Springs Utilities money by replacing current debt with debt at cheaper interest rates.
<b>Board Policy:</b> <small>If this impacts one of the board policies, indicate that here.</small>	CCA-2 Issue Revenue Bonds
<b>Cost / Budget:</b> <small>Include the projected cost or budget here.</small>	Costs are subject to market interest rates at the time of issuance. However, detailed current indicative estimates are provided in the presentation.
<b>Affected Parties:</b> <small>This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.</small>	N/A
<b>Alternatives:</b>	N/A

<b>Submitter:</b>	Adam Hegstrom	<b>Email Address:</b>	ahegstrom@csu.org
<b>Division:</b>	Planning and Finance	<b>Phone Number:</b>	719.668.8530
<b>Department:</b>	Treasury and Finance	<b>Date Submitted:</b>	June 3, 2024

<b>SPG Staff Use Only:</b>	Consent Calendar <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Item Number 10
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ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING



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# 2024AB Bond Ordinance

Adam Hegstrom  
Treasury and Finance Manager  
June 18, 2024

# Plan of Finance Overview

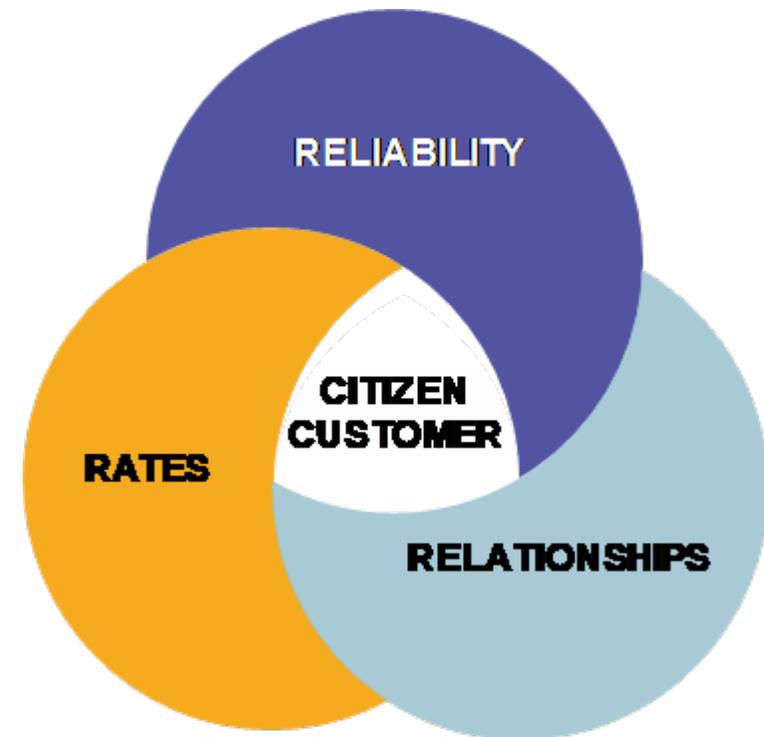
The Plan of Finance is an annual strategic effort to effectively obtain and manage debt obligations to support Colorado Springs Utilities' ("The Utilities") capital needs

- Critical to Utilities Board's Strategic Focus
- Core tenets:

**Prudence - Efficiency - Flexibility**

Collectively executed by:

- Utilities Leadership
- Planning and Finance Staff
- Key Advisors
  - Financial Advisor
  - Bond Counsel
- Key Banking Partners and Counterparties



# Plan of Finance Overview

## Plan of Finance efforts are dedicated towards four key objectives:

1. Fund the debt-backed portion of The Utilities' upcoming capital plan
2. Manage and optimize The Utilities' current debt portfolio
3. Procure and manage debt-supporting instruments and ancillary services
4. Manage The Utilities' financial reputation and industry relationships to ensure market access



# New Money Debt Issuance: 2024As

**Objective 1:** Support The Utilities' operations by funding the debt-backed portion of the Enterprise's future capital plan ("New Money Issuances")

## Enterprise Need:

- Estimated \$480 million in total capital spend between September 2024 and September 2025

## Anticipated Actions:

- Issue new money debt in August 2024



# New Money Debt Issuance: 2024As

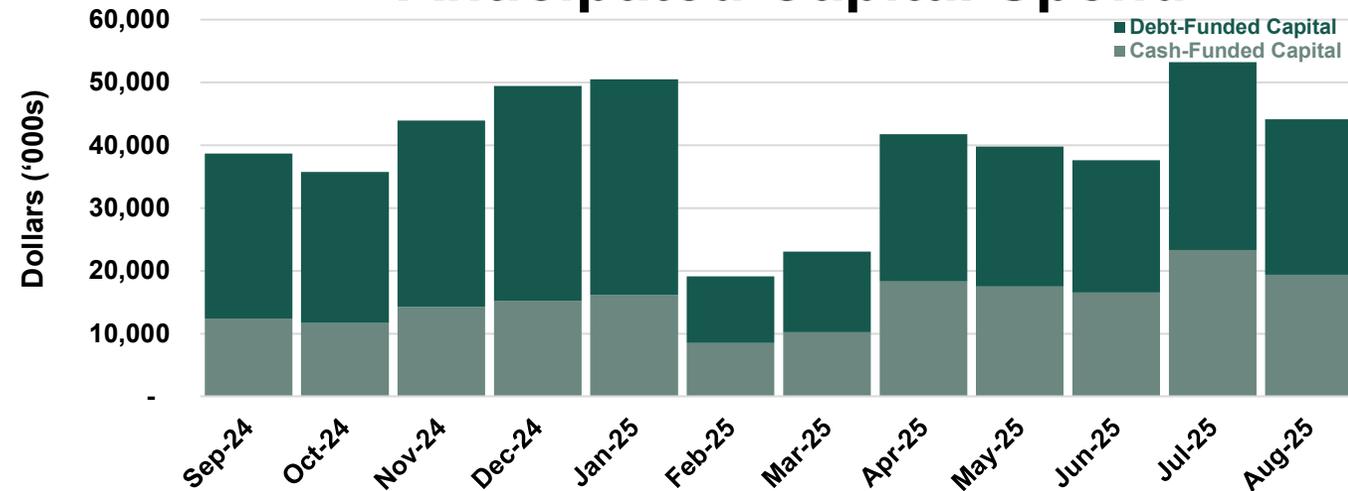
## Anticipated Issuance Details:

- Current Estimated - \$307 million (proceeds)
- Ordinance Ceiling - \$325 million
- More clarity in coming months surrounding 2025 AOP/Capital Plan
- Approximately 62% debt-funded capital over financing period
- Effective balance between cash and debt to optimize financial metric performance

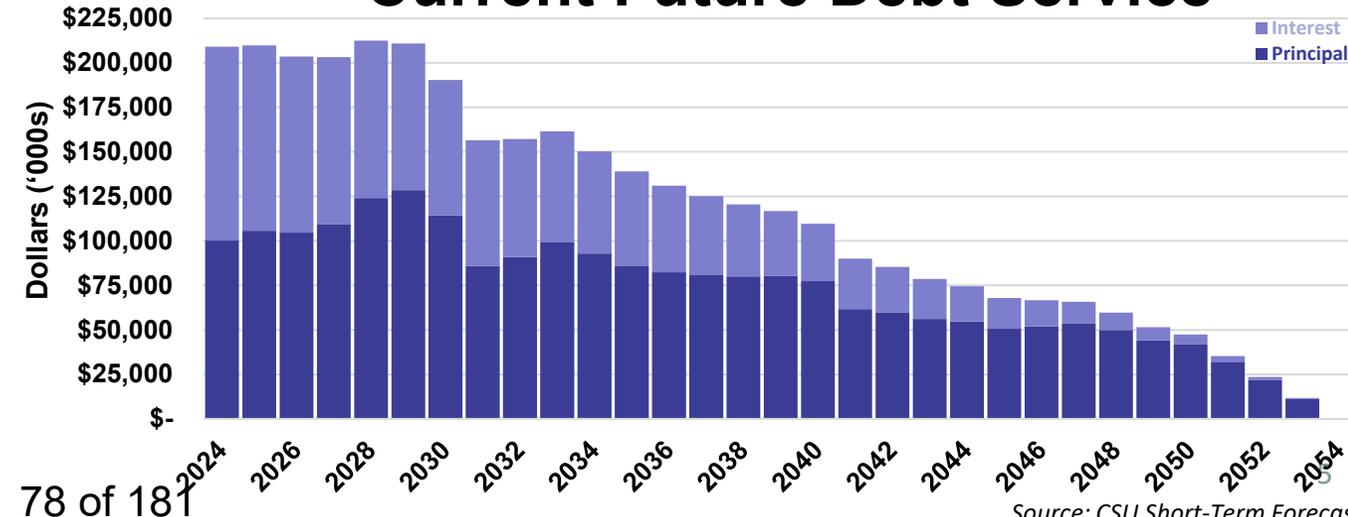
## Structure:

- Traditional tax exempt fixed-rate debt
- Maturity-by-maturity optimization near issuance date

## Anticipated Capital Spend



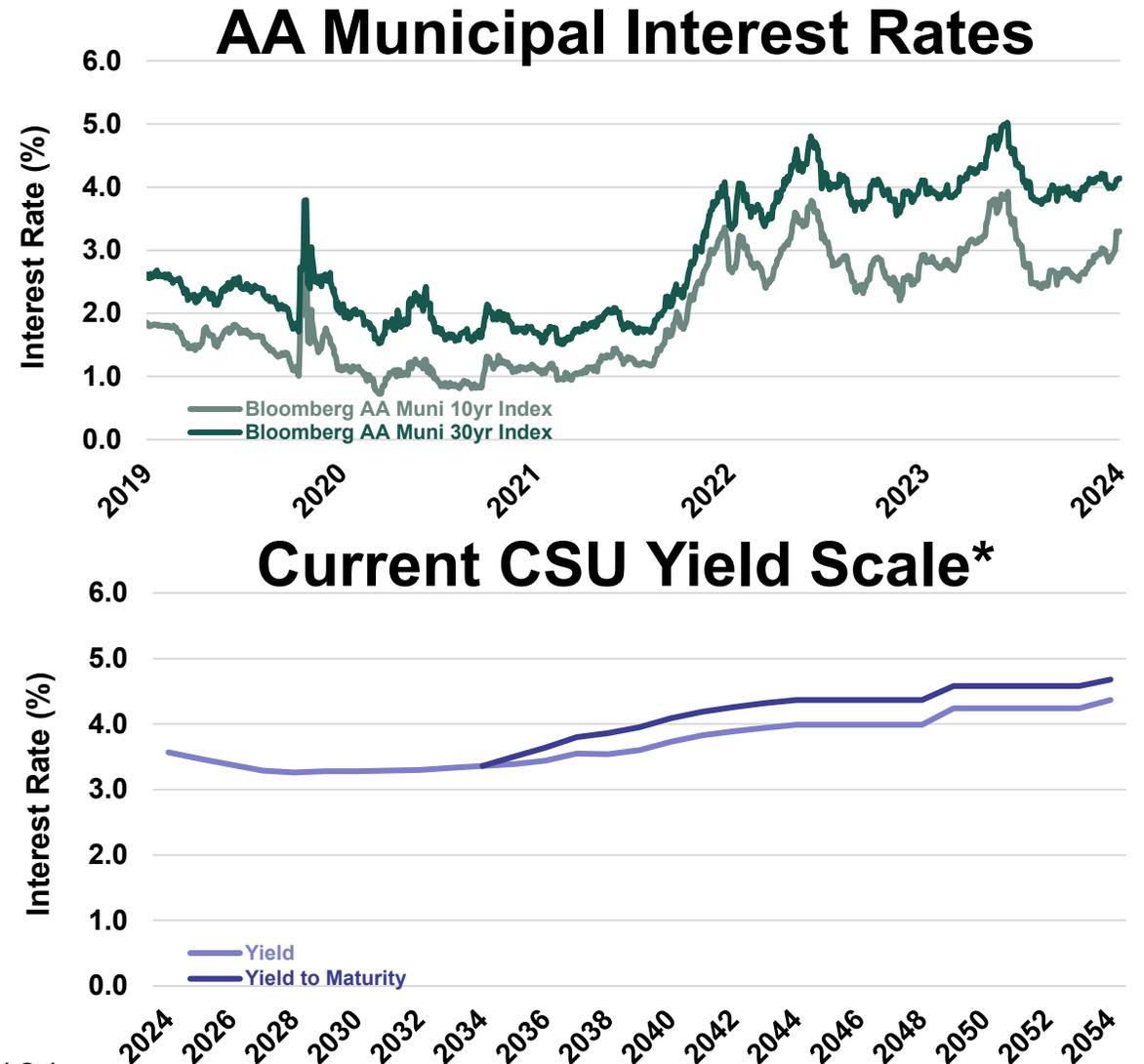
## Current Future Debt Service



# New Money Debt Issuance: 2024As

## Market Update:

- Interest rates have risen slightly since the last issuance
- The yield curve has remained persistently inverted since 2022
- Given the current short-term interest rate environment, planned issuance date (August) selected to optimize earnings on funds in escrow
- Inflation is still above the Federal Reserve's target range
- Municipal supply is up 37% compared to 2023



# Refunding Debt Issuance: 2024Bs

**Objective 2:** Manage and optimize The Utilities' current debt portfolio (“Refunding Issuances”)

- \$1.92 billion in outstanding fixed rate bonds
- Vast majority can be refinanced 10 years after issuance if interest rate economics are favorable

## Anticipated Actions:

- Issue a current refunding transaction in August to refinance all/parts of the 2014A-1, 2014A-2 issuance:

### Current Estimated Refunding Results

	2014A-1	2014A-2
Par Value of Remaining Bonds	\$53.1 million	\$49.1 million
Cashflow Savings from Refunding	\$5.9 million	\$5.4 million
NPV Savings (\$)	\$4.1 million	\$3.8 million
NPV Savings (%)	7.752%	7.716%

# Industry and Investor Relationships

**Objective 4:** Manage The Utilities' financial reputation and industry relationships to ensure market access

## Underwriter Selection

- Pool established in 2023 for an anticipated 5-year term
- Competitive selection process completed in early May
- Team selected for 2024AB issuance:
  - Senior Manager – Bank of America
  - Co-Managers – Goldman Sachs, J.P. Morgan, and Piper Sandler



# Industry and Investor Relationships

**Objective 4:** Manage The Utilities' financial reputation and industry relationships to ensure market access

## Credit Rating Agencies

- Currently preparing messaging materials for upcoming rating agency meetings
- Anticipated topics of interest to address:
  - Funding of large future capital programs driven by
    - Regulatory Planning
    - Resiliency and Reliability Planning
    - Preparing for Growth
  - Five-Year Financial Plan
  - Rate Design Initiatives
    - Electric Time-of-Day Rates
    - Recovery of specific, well-defined costs through bill riders

	MOODY'S	S&P Global	FitchRatings
	Moody's	S&P	Fitch
	Aaa	AAA	AAA
	Aa1	AA+	AA+
	Aa2	AA	AA
	Aa3	AA-	AA-
Investment Grade	A1	A+	A+
	A2	A	A
	A3	A-	A-
	Baa1	BBB+	BBB+
	Baa2	BBB	BBB
	Baa3	BBB-	BBB-
Non-Investment Grade High Yield "Junk"	Ba1	BB+	BB+
	Ba2	BB	BB
	Ba3	BB-	BB-
	B1	B+	B+
	B2	B	B
	B3	B-	B-
	Caa	CCC	CCC
	Ca	CC	CC
	C	C	C
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# Debt Issuance Working Timetable

Date	Event
<i>Friday, January 12, 2024</i>	<i>Plan of Finance Presentation to Finance Committee</i>
<i>Thursday, April 21, 2024</i>	<i>JP Morgan Investor Conference</i>
<i>Monday, May 1, 2024</i>	<i>Underwriter RFP Selection</i>
<i>Monday, June 17, 2024</i>	<i>Finance Committee Presentation</i>
<b>Tuesday, June 18, 2024</b>	<b>Utilities Board Presentation</b>
Monday, July 8, 2024	Rating Agency Presentations
Tuesday, July 9, 2024	First Reading of Ordinance - City Council
Tuesday, July 23, 2024	Second Reading of Ordinance & Ordinance Approval – City Council
Wednesday, July 24, 2024	Due Diligence Call
Tuesday, August 6, 2024	Bond Pricing
Tuesday, August 20, 2024	Issuance Closing



Colorado Springs Utilities<sup>®</sup>

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# Board Memo Agenda Item

## Staff Report

<b>Date:</b> (Date of Utilities Board Meeting)		June 18, 2024	
<b>To:</b>		Utilities Board	
<b>From:</b>		Travas Deal, Chief Executive Officer	
<b>Subject:</b>		I-3 Policy Update – Utilities construction of Water and Wastewater distribution/collection infrastructure	
<b>NARRATIVE:</b>			
<b>Desired Action:</b> Choose only one		<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Discussion <input type="checkbox"/> Information	
<b>Executive Summary:</b>		<p>Springs Utilities recommends policy modifications to the Financial Planning and Budgeting Instruction (I-3), and the addition of a new Determination to Construct Water and/or Wastewater Extensions Guideline (G-13), to define the requirements of informing Utilities Board on determinations to construct water distribution and/or wastewater collection systems as established in Utilities Rules and Regulations.</p>	
<b>Benefits:</b>		Recommended policy changes improve transparency related to Springs Utilities' determinations to construct water distribution and/or wastewater collection infrastructure.	
<b>Board Policy:</b> <small>If this impacts one of the board policies, indicate that here.</small>		Financial Planning and Budgeting (I-3)	
<b>Cost / Budget:</b> <small>Include the projected cost or budget here.</small>		N/A	
<b>Affected Parties:</b> <small>This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.</small>		Water and wastewater customers	
<b>Alternatives:</b>		N/A	
<b>Submitter:</b>	Scott Shirola	<b>Email Address:</b>	sshirola@csu.org
<b>Division:</b>	Planning and Finance	<b>Phone Number:</b>	719-668-8861
<b>Department:</b>	Pricing-Rates	<b>Date Submitted:</b>	June 5, 2024
<b>SPG Staff Use Only:</b>		Consent Calendar <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Item Number 12	
ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING			



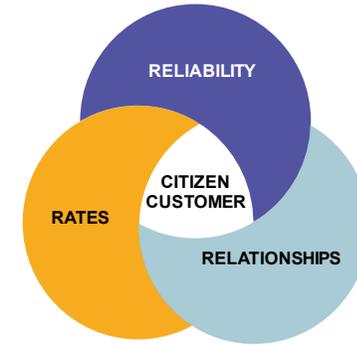
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# I-3 Policy Update Water and Wastewater Extensions

Scott Shirola, Pricing and Rate Manager

June 18, 2024

# Strategic Alignment



## Colorado Springs Utilities Strategy Map

Utilities Board Focus Areas: Rates, Reliability, Relationships

### OUR MISSION

Provide safe, reliable and competitively-priced utilities to our customers.

### OUR VISION

Ready for today, prepared for a sustainable future.

### OUR VALUES

Safety, People, Trust, Responsibility, Collaboration, Continuous Improvement.

### STRATEGIC OBJECTIVES

Deliver quality utilities	Focus on the customer	Financial accountability	Support our community	Enable employee empowerment
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# Water and Wastewater System Extension Background

- Utilities Rules and Regulations establish system extension policy
  - Property owner/developer (developer) is responsible for the cost of collection system infrastructure necessary to serve the premises or development
  - Generally, developer is responsible for infrastructure engineering and construction
    - Utilities may require construction of infrastructure larger than is required for the developer's needs to provide service beyond the development
      - Developer may recover the capacity cost of oversize requirement through Recovery Agreement Charges
  - At Utilities' discretion, Utilities may construct infrastructure when Utilities determines it is in the best interest to:
    - Protect water or wastewater service to existing customers
    - Allow for the continued development within the service area
    - To provide benefit to the entire service area

# Water and Wastewater System Extension Background

- Utilities constructed distribution and collection infrastructure:
  - Costs and interest will be recovered through Recovery Agreement Charge
  - Utilities may implement Advanced Recovery Agreement Charge to collect cost in advance of construction

# Utilities' Discretion and Board Governance

- Utilities constructed infrastructure requires extensive system and financial planning
  - Associated with large, multi-year capital projects
  - Projects may have long-term (multi-decade) cost recovery through Recovery Agreement Charges
- Board reporting of Utilities' exercise of discretion to construct infrastructure supports:
  - Transparency and customer engagement
  - Alignment with Strategic Plan and Annual Financial and Operating Plan

# Financial Planning and Budgeting (I-3)

## Current

**The Chief Executive Officer shall direct that financial planning and budgeting is multi-year and includes planning assumptions, capital and operations expenses and projections of revenues and cash flow. Accordingly, the CEO shall:**

1. Maintain financial stability by meeting Utilities Board approved financial metrics that support an AA long-term credit rating.
2. Financially position the enterprise to meet long-range infrastructure funding requirements while moderating customers' average base bill adjustments.
3. Use planning assumptions that accurately forecast revenues and expenses.
4. Direct that a water reserve account is established and maintained to manage water sales volatility.
5. Direct that a water acquisition account is established and maintained to fund expenditures that enable timely acquisitions and participation in supply projects that increase raw water system yield.
6. Use financial methods that share the cost of utility infrastructure between current and future customers.
7. Use risk-based modeling and a defined enterprise procedure to prioritize operations and maintenance infrastructure.

## Recommended Revision (addition of paragraph #8)

8. Inform Utilities Board of Utilities' determinations to design and construct water distribution and/or wastewater collection systems as defined in sections VIII.B.1 and IX.C.1 of Utilities Rules and Regulations.

# Recommended New Guideline (G-13)

- **Determination to Construct Water and/or Wastewater Extension**

**Springs Utilities informs Utilities Board of determinations to construct water distribution and/or wastewater collection system. Information provided to Utilities Board may include the following:**

- A. System and operational considerations
  - Design capacity
  - Complexity of design and construction
  - Land and easement acquisition
- B. Financial estimates
  - Cost and schedule
  - Recovery Agreement Charge and/or Advance Recovery Agreement Charge
  - Water and wastewater rate impacts
- C. Environmental considerations
  - Regulatory and permitting requirements
  - Identified impacts to waterways
- D. Community support considerations
  - Regional significance
  - Impact to growth and economic development

# Future Related Items

- July 17, 2024 Utilities Board Meeting
  - Eastern Wastewater Expansion Information
- August 21, 2024 Utilities Board Meeting
  - Draft 2025 Budget and Rate Case
    - Recovery Agreement – Unit Recovery Charge



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INSTRUCTIONS		
Category:	<b>Utilities Board Instructions to the Chief Executive Officer</b>	Date of Adoption: <b>May 16, 2018</b>
Policy Title (Number):	<b>Financial Planning and Budgeting (I-3)</b>	Revision Date: <del>June 18, 2024</del> <b>July 20, 2022</b>
Monitoring Type:	<b>Internal</b>	Revision Number: <del>21</del>
Monitoring Frequency:	<b>Annual</b>	
Guidelines:	<b>Water Reserve Account (G-8)</b> <b>Water Acquisition Account (G-12)</b> <u><b>Determinations to Construct Water and/or Wastewater Extensions (G-13)</b></u>	

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**The Chief Executive Officer shall direct that financial planning and budgeting is multi-year and includes planning assumptions, capital and operations expenses and projections of revenues and cash flow. Accordingly, the CEO shall:**

1. Maintain financial stability by meeting Utilities Board approved financial metrics that support an AA long-term credit rating.
2. Financially position the enterprise to meet long-range infrastructure funding requirements while moderating customers' average base bill adjustments.
3. Use planning assumptions that accurately forecast revenues and expenses.
4. Direct that a water reserve account is established and maintained to manage water sales volatility.
5. Direct that a water acquisition account is established and maintained to fund expenditures that enable timely acquisitions and participation in supply projects that increase raw water system yield.
6. Use financial methods that share the cost of utility infrastructure between current and future customers.
7. Use risk-based modeling and a defined enterprise procedure to prioritize operations and maintenance infrastructure.

8. Inform Utilities Board of Utilities' determinations to design and construct water distribution and/or wastewater collection systems as defined in sections VIII.B.1 and IX.C.1 of Utilities Rules and Regulations.

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## GUIDELINES

<u>Guideline:</u>	<b><u>Determinations to Construct Water and/or Wastewater Extensions (G-13)</u></b>	<u>Date of Adoption:</u> <b>June 18, 2024</b>
<u>Applicable Policy Title (Number):</u>	<b><u>Financial Planning and Budgeting (I-3)</u></b>	<u>Revision Date:</u>
		<u>Revision Number:</u>

### Determination to Construct Water and/or Wastewater Extensions

1. As provided in Utilities Rules and Regulations, Springs Utilities may design and construct water distribution and/or wastewater collection systems when, in Springs Utilities sole discretion, it is in the best interest to protect water and/or wastewater service to existing customers, to allow for the continued development within the service area(s), and/or to provide benefit to the entire service area(s). Springs Utilities will recover the costs of such facilities, with interest, through a Recovery Agreement Charge and/or an Advance Recovery Agreement Charge.
  
2. Springs Utilities informs Utilities Board of determinations to construct water distribution and/or wastewater collection system. Information provided to Utilities Board will be dependent on the specific characteristics of the applicable project, which may be subject to other rules, requirements, and policies. When applicable, information provided by Utilities will include the following:
  - A. System and operational considerations
    - Design capacity
    - Complexity of design and construction
    - Land and easement acquisition
  - B. Financial estimates
    - Cost and schedule
    - Recovery Agreement Charge and/or Advance Recovery Agreement Charge
    - Water and wastewater rate impacts
  - C. Environmental considerations
    - Regulatory and permitting requirements
    - Identified impacts to waterways
  - D. Community support considerations
    - Regional significance
    - Impact to growth and economic development

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# Board Memo Agenda Item

## Staff Report

<b>Date:</b> <small>(Date of Utilities Board Meeting)</small>	June 18, 2024		
<b>To:</b>	Utilities Board		
<b>From:</b>	Travas Deal, Chief Executive Officer		
<b>Subject:</b>	Electric Cost Adjustment (ECA) and Gas Cost Adjustment (GCA) Update		
<b>NARRATIVE:</b>			
<b>Desired Action:</b> Choose only one	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Information		
<b>Executive Summary:</b>	<p>Colorado Springs Utilities provides monthly monitoring of the ECA and GCA and provides regular updates to the Utilities Board. Based on cost adjustment guidelines (Guideline G-6) approved by the Board, Utilities typically files ECA and GCA rate changes with City Council on a quarterly basis. Utilities has completed the review of potential quarterly ECA and GCA rates changes, effective July 1, 2024. Based on the immaterial financial impact of the potential adjustments, Utilities Staff recommends maintaining the current ECA and GCA rates at this time, and as a result, Utilities does not anticipate filing requests to change the ECA and GCA rates with City Council in June 2024.</p> <p>Utilities will continue to monitor the ECA and GCA and will provide regular updates to the Utilities Board as appropriate.</p>		
<b>Benefits:</b>	Proposal of timely cost adjustments to pass through cost associated with fluctuations in market prices.		
<b>Board Policy:</b> <small>If this impacts one of the board policies, indicate that here.</small>	Electric and Gas Cost Adjustments (G-6)		
<b>Cost / Budget:</b> <small>Include the projected cost or budget here.</small>	Timely monitoring and adjustment of fuel related rates supports Utilities' Annual Operating and Financial Plan.		
<b>Affected Parties:</b> <small>This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.</small>	Utilities' Electric and Natural Gas Customers		
<b>Alternatives:</b>	Board to provide alternative direction.		
<b>Submitter:</b>	Scott Shirola	<b>Email Address:</b>	sshirola@csu.org
<b>Division:</b>	Planning and Finance Division	<b>Phone Number:</b>	(719) 668-8661
<b>Department:</b>	Pricing and Rates	<b>Date Submitted:</b>	06-13-2024
<b>SPG Staff Use Only:</b>	Consent Calendar <input type="checkbox"/> Yes <input type="checkbox"/> No		Item Number 13
<b>ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING</b>			



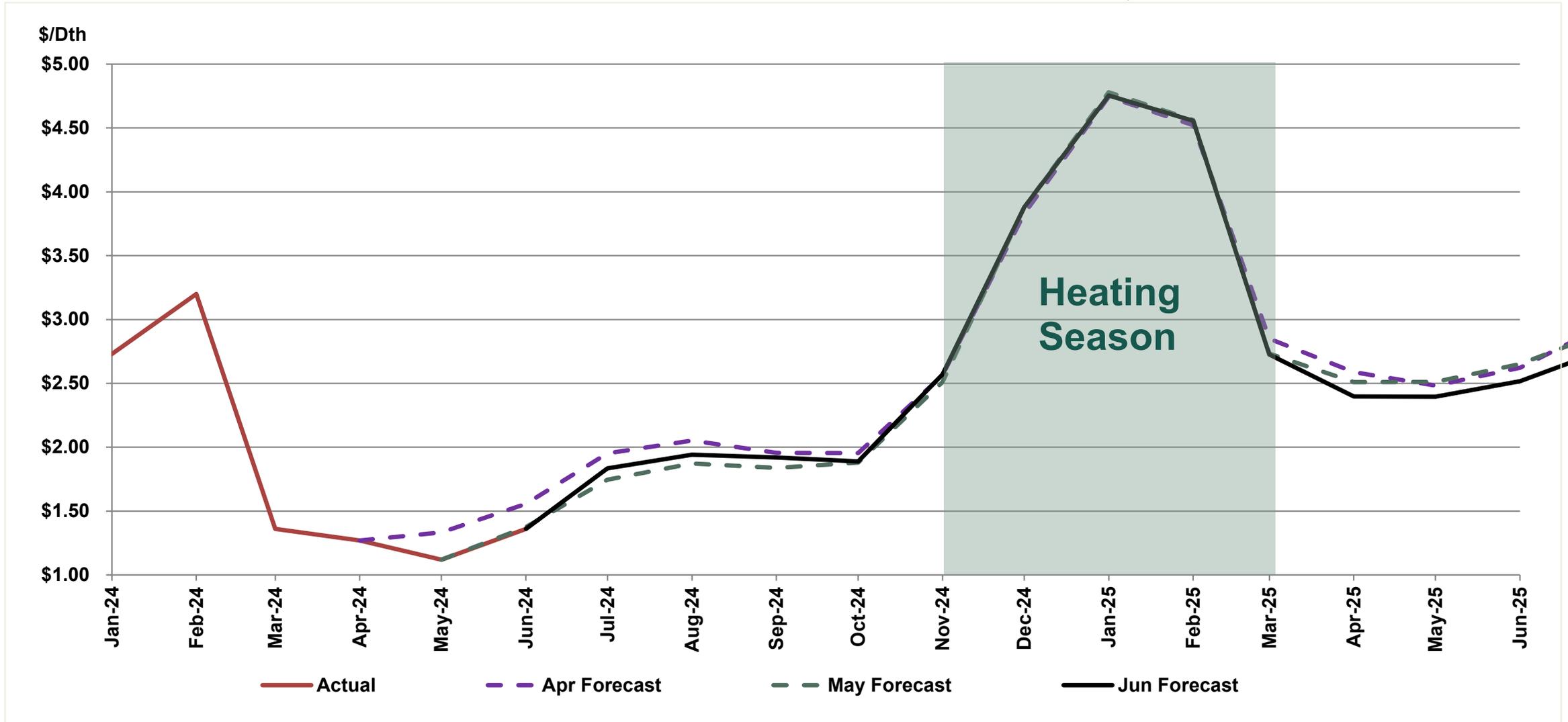
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# **Electric Cost Adjustment Gas Cost Adjustment**

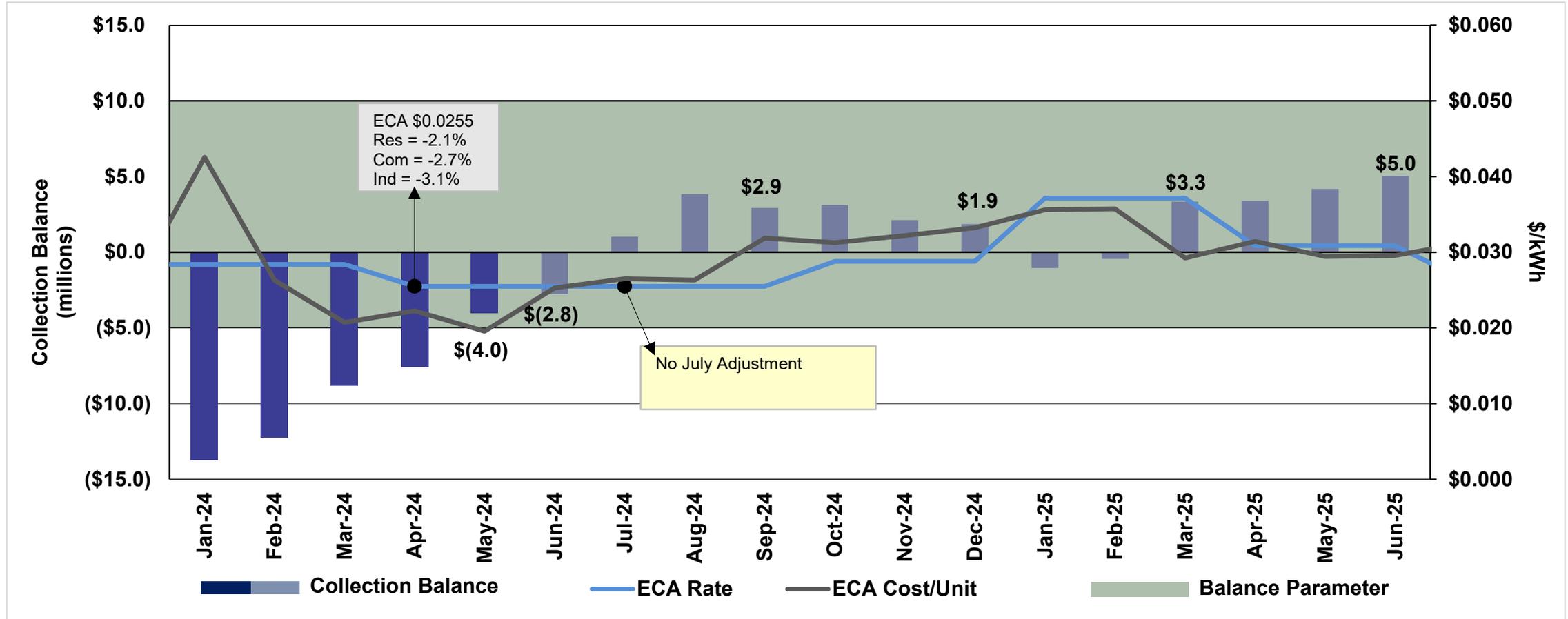
Scott Shirola, Pricing and Rates Manager

June 18, 2024

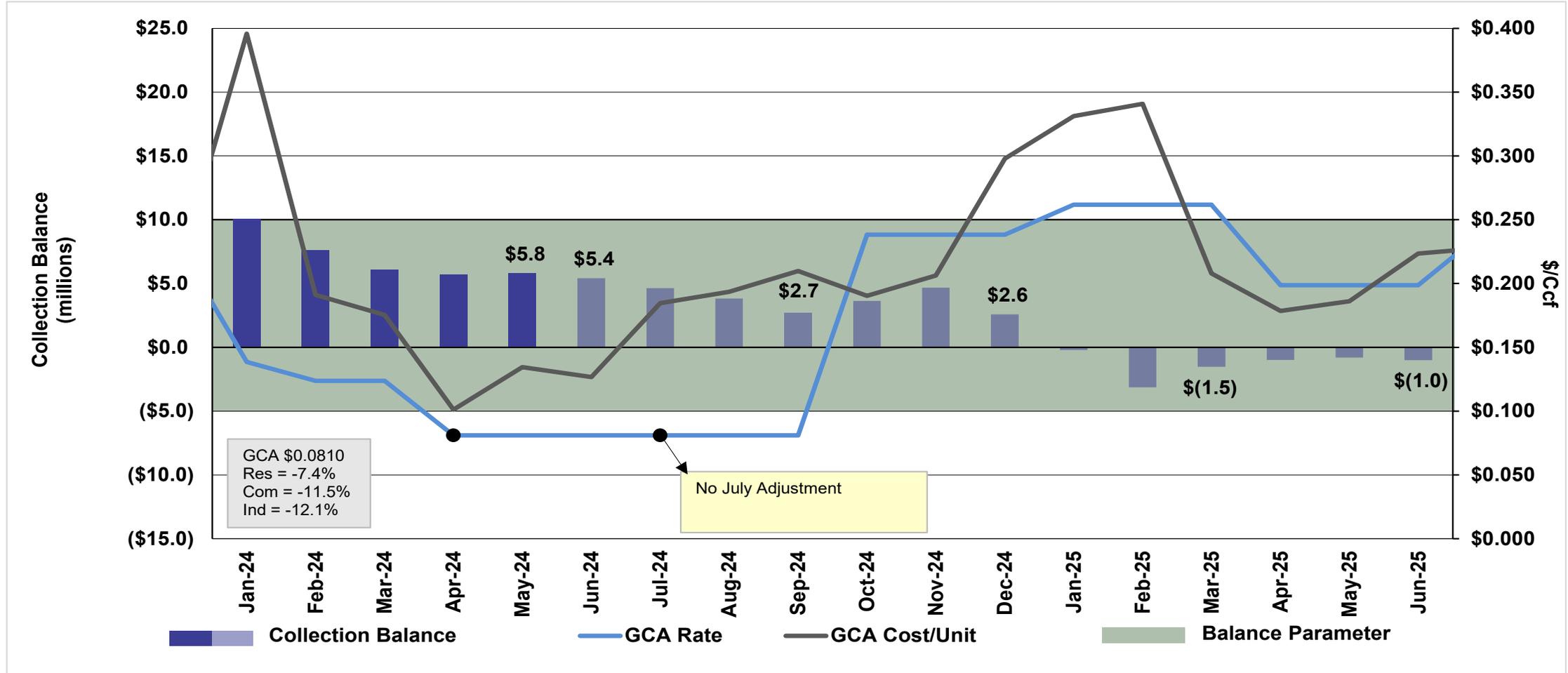
# Natural Gas Prices as of June 1, 2024



# ECA Projections June 2024



# GCA Projections June 2024



# Next Steps

- Utilities will continue to provide regular updates to the Utilities Board as appropriate
  - Anticipated E-2 Monitoring
    - July 2024
    - August 2024
  - Next scheduled quarterly ECA and GCA rate filing
    - September 2024 presentation
    - Rates effective October 1, 2024



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# Board Memo Agenda Item

## Staff Report

<b>Date:</b> (Date of Utilities Board Meeting)	June 18, 2024		
<b>To:</b>	Utilities Board		
<b>From:</b>	Travas Deal, Chief Executive Officer		
<b>Subject:</b>	Arkansas Basin Water Sharing Program Water Rights Acquisition		
<b>NARRATIVE:</b>			
<b>Desired Action:</b> Choose only one	<input type="checkbox"/> Approval <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Information		
<b>Executive Summary:</b>	<p>Colorado Springs Utilities entered into a Purchase and Sale Agreement to acquire 111 shares in the Fort Lyon Canal Company shares which will yield an average of 111 acre-feet per year from Alan Dean, as well as real property covenants, and agreements necessary for Colorado Springs Utilities to use the water derived from the shares. The total cost for the acquisition is up to \$888,000 with additional closing costs. The acquisition and subsequent Water Court applications necessary to use the water derived from the shares require City Council approval and staff plans to bring a separate resolution authorizing the acquisition and filing of the Water Court applications to City Council for consideration on the consent calendar at its July 9, 2024, meeting.</p>		
<b>Benefits:</b>	<p>This project is consistent with policy direction contained in Springs Utilities' 2017 Integrated Water Resource Plan and the Colorado Water Plan to pursue municipal water supply in a way that maintains the viability of agriculture in communities of the Lower Arkansas Basin.</p>		
<b>Board Policy:</b> If this impacts one of the board policies, indicate that here.	I-7 Water Resource Management		
<b>Cost / Budget:</b> Include the projected cost or budget here.	The cost for this acquisition is \$888,000 with additional closing costs if City Council approves the proposed resolution.		
<b>Affected Parties:</b> This could include community groups, specific City Council Districts, other utilities, nonprofit organizations, certain neighborhoods, Colorado Springs Utilities employees, etc.	Existing and future customers of Colorado Springs Utilities		
<b>Alternatives:</b>	Approve or not approve Colorado Springs Utilities bringing a resolution approving the transaction to City Council for consideration on the consent calendar of Council's regular meeting on July 9, 2024.		
<b>Submitter:</b>	Abigail Ortega	<b>Email Address:</b>	ajortega@csu.org
<b>Division:</b>	Water Resources Management	<b>Phone Number:</b>	719-668-8748
<b>Department:</b>	System Planning & Projects	<b>Date Submitted:</b>	May 31, 2024
<b>SPG Staff Use Only:</b>	Consent Calendar <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Item Number 13

ITEMS SUBMITTED AFTER THE DEADLINE WILL BE POSTPONED UNTIL THE NEXT UTILITIES BOARD MEETING.



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# Arkansas Basin Water Sharing Program Water Rights Acquisition

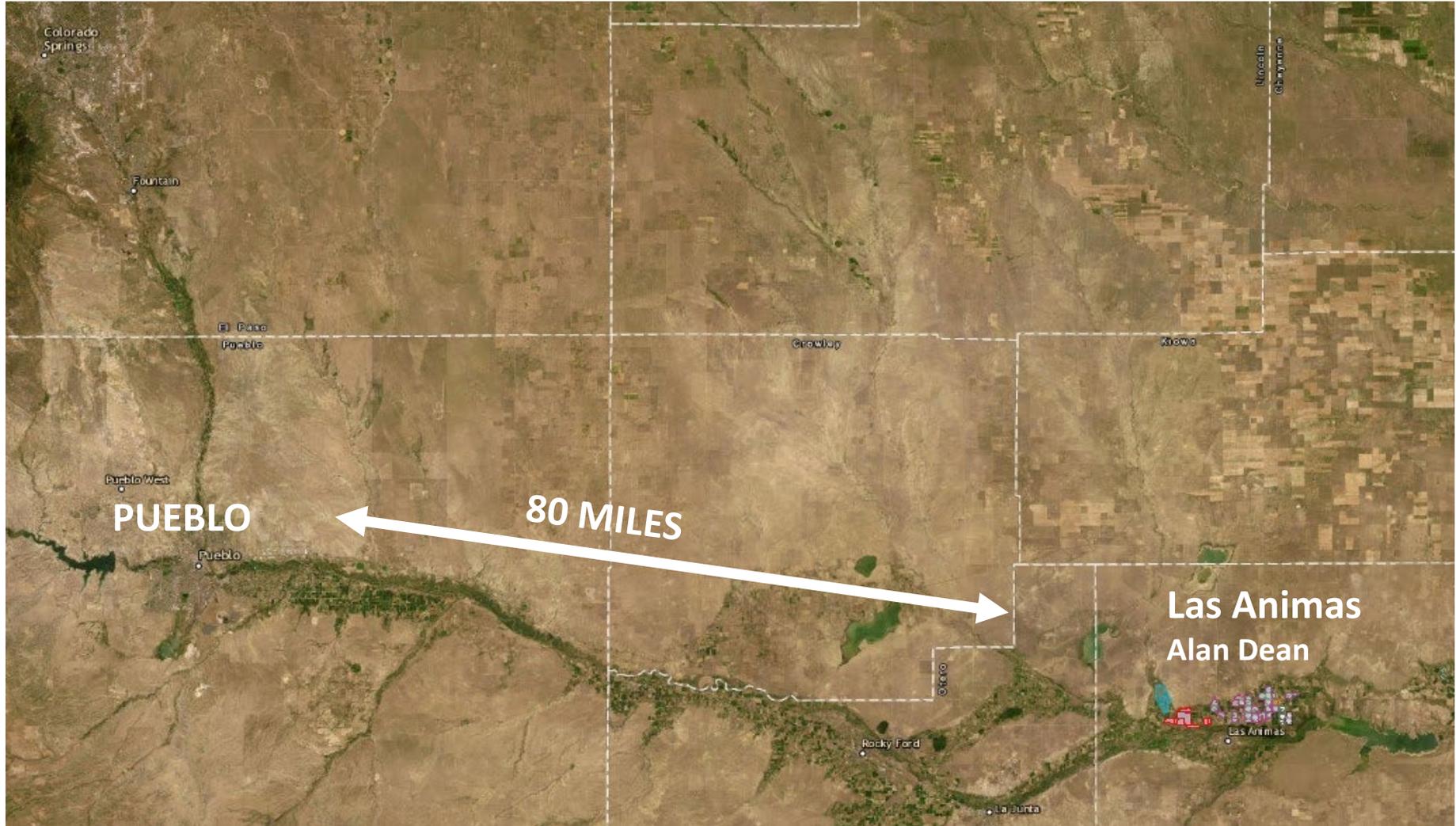
**Kim Gortz, Manager, Water Resource**  
**Kelly Roesch, Project Manager, Arkansas Valley Field  
Office**

**June 18, 2024**

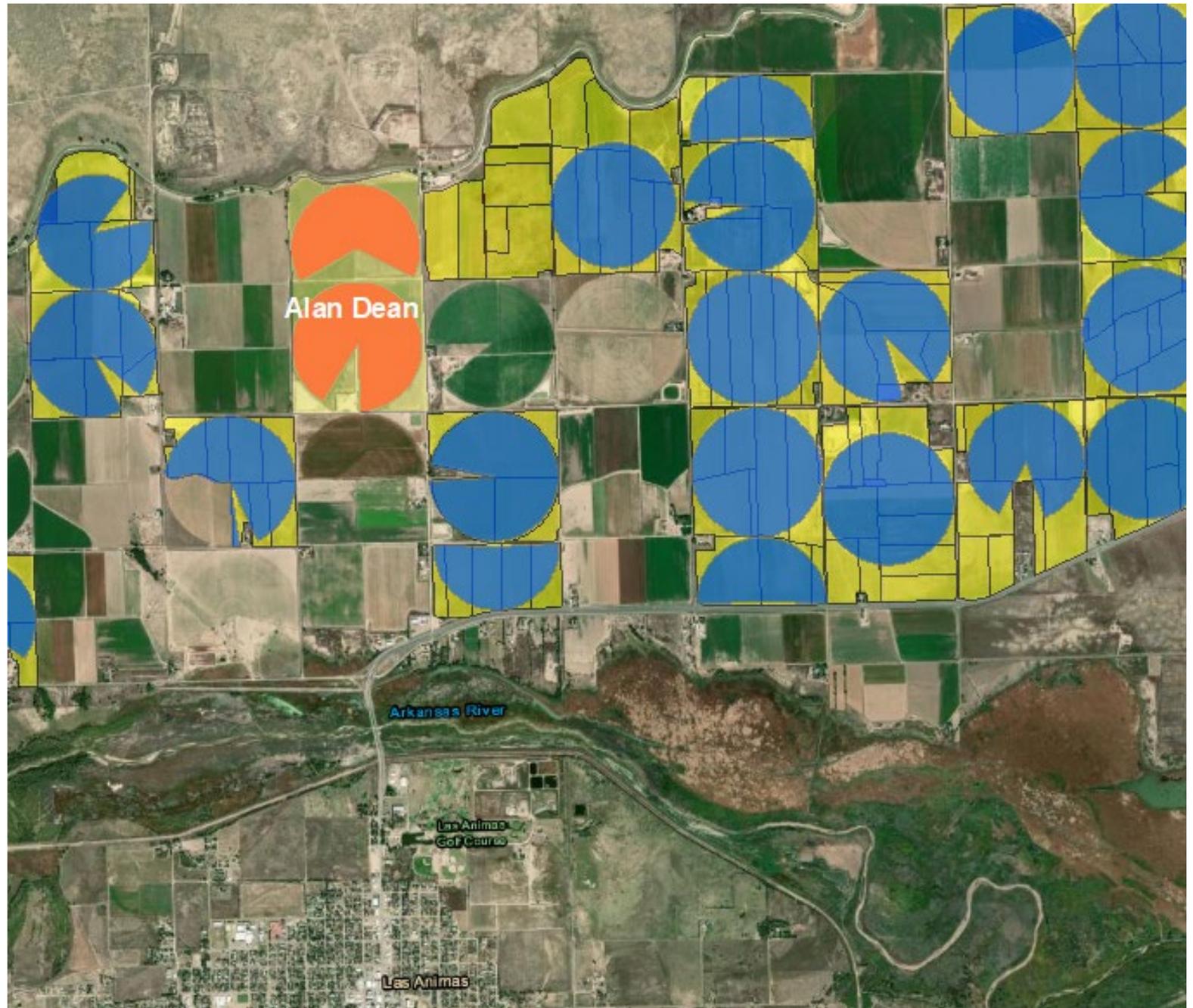
# Arkansas Basin Water Sharing



# Site location

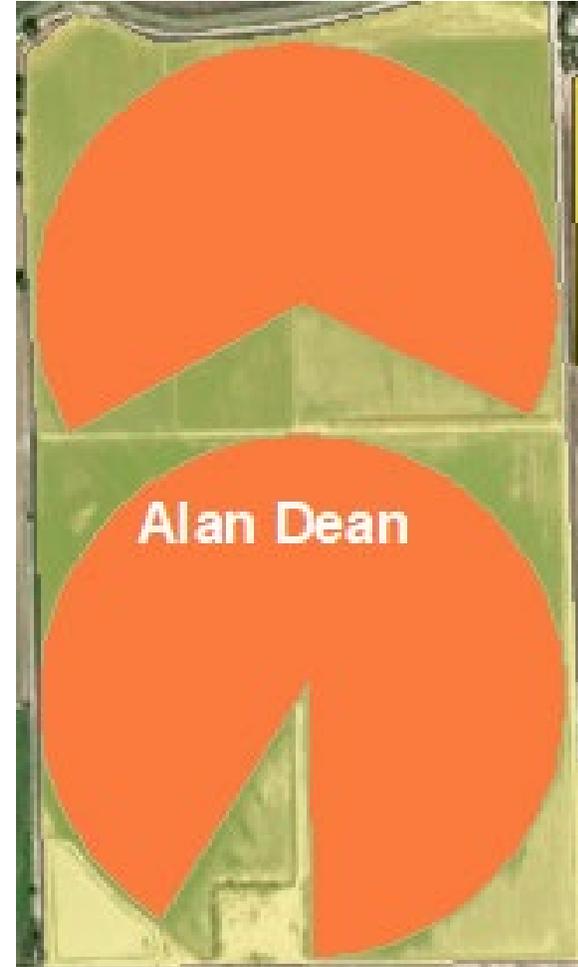


# Alan Dean Farm



# Project-Overview

- Farm historically irrigated with 450 Fort Lyon Canal Company (FLCC) shares
- 256 Flood irrigated Acres converted to center pivot
- 2 Center pivots installed
- 193 Acres now irrigated by center pivot
- 63 Previously irrigated acres outside of center pivot



# Key Terms

- Utilities to acquire 111 of the 450 FLCC shares for \$721,500(\$6,500/Share)
- Utilities to pay Dean \$166,500 (\$1,500/Share) to assist with irrigation improvement costs.
- PSA signed 5/1/2024
- Total \$888,000 from Water Acquisition Fund
- Center Pivots have been installed and are operational
- Acquisition is consistent with the Bent County IGA.

# Timeline – Next Steps

- Purchase and Sale Agreement signed May 2024
- Utilities Board consideration – June 2024
- Due diligence to be completed
- City Council consideration July 2024
- Closing August 16, 2024
- Will require FLCC, Bent County, and Water Court approval prior to use.

# Questions?



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## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (“PSA”) is entered into and is effective as of the Effective Date (as defined in Section 2.7 below) by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise, Colorado Springs Utilities (“Utilities”), and Alan Dean (“Seller”). Utilities and Seller may be referred to herein, individually, as a “Party”, and, collectively, as the “Parties”.

### RECITALS

**A. WHEREAS**, Seller owns certain real property in Bent County, Colorado, as legally described in Exhibit A, hereto (the “Farm”);

**B. WHEREAS**, the Farm has been historically flood irrigated with, among other things, four hundred and fifty (450) shares of capital stock in the Fort Lyon Canal Company (“FLCC”) currently represented by stock certificate number 9803 (“FLCC Shares”);

**C. WHEREAS**, Seller has installed center pivot sprinklers, including support infrastructure (e.g., ponds, pumps, piping, etc.) on the Farm (the “Center Pivot Sprinklers”);

**D. WHEREAS**, with the Center Pivot Sprinklers installed, Seller will no longer irrigate the parcel corners on the Farm (the “Parcel Corners”) with water attributable to the FLCC Shares;

**E. WHEREAS**, because Seller will no longer irrigate the Parcel Corners with water attributable to the FLCC Shares, one hundred and eleven (111) of the FLCC Shares, including the historical consumptive use (“HCU”) of these shares, (the “Corner Shares”) will be available for other uses;

**F. WHEREAS**, because the Corner Shares are available for other uses, Seller desires to sell to Utilities and Utilities desires to purchase the Corner Shares according and subject to the terms and conditions of this PSA;

**G. WHEREAS**, Utilities is, among other things, a municipal water utility, and as such has a need and necessity for the Corner Shares for the purposes of supplying water for municipal and other uses to, among others, the inhabitants of the City of Colorado Springs, Colorado and other water customers;

**H. WHEREAS**, in order for Utilities to receive the benefit of the water derived from the Corner Shares, Utilities will need to construct and operate return flow and augmentation facilities to ensure that the water attributable to the Corner Shares can be delivered to the FLCC ditch system and/or the Arkansas River and its tributaries, as Utilities determines for municipal use by Utilities and the replacement of historical return flows;

**I. WHEREAS**, as further consideration for the Purchase Price, the Parties will agree upon the terms of Dry-Up Covenants as defined in Section 7.1.2 of this PSA and Seller agrees to

convey to Utilities Return Flow and Augmentation Facility Easements as defined in Section 7.1.3 of this PSA;

**J. WHEREAS**, the Corner Shares, and the Return Flow and Augmentation Facility Easements, are collectively referred to as the “Purchased Property”.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **TERMS AND CONDITIONS**

**1.** The above recitals are hereby incorporated into the terms and conditions of this PSA as if fully set forth herein.

**2. Definitions.** For the purposes of this PSA, the following terms shall have the following meanings, unless the context clearly requires otherwise:

2.1 “Closing” means those activities described herein that are required to complete the purchase and sale of the Purchased Property from Seller to Utilities.

2.2 “Closing Date” means on or before August 16, 2024, unless otherwise mutually agreed in writing by the Parties, and is the date by which all Closing activities will be completed.

2.3 “Closing Deliveries” means those items Seller and Utilities are required to deliver to the Title Company under Sections 7.4 and 7.5, respectively.

2.4 “Corner Shares” means one hundred and eleven (111) of the FLCC Shares that will be assigned to the Parcel Corners.

2.5 “Corner Share Water Rights” means the water rights represented by the Corner Shares and all beneficial rights, title, and interests in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates, and all other assets, rights, title, or interests derived from or represented by the Corner Shares.

2.6 “Dry-Up Covenant” means a legal document signed by Seller attesting that the Corner Shares and Corner Share Water Rights are no longer required, and will no longer be used, for irrigation or watering of the Farm and that the portions of the Farm no longer irrigated by the Corner Shares are dried-up, as necessary.

2.7 “Effective Date” means the last date on which this PSA has been mutually executed by Utilities and Seller.

2.8 “FLCC” shall mean The Fort Lyon Canal Company, a Colorado non-profit corporation.

2.9 “Purchase Price” means the price agreed to between Utilities and Seller in Section 4 of this PSA for the purchase and sale of the Purchased Property.

2.10 “Title Company” means a third party selected by Utilities pursuant to Section 7.6 below who will hold funds and documents in pending completion of Closing, in accordance with this PSA.

**3. Sale and Purchase.** Subject to the terms and conditions of this PSA, Seller hereby agrees to sell, and Utilities agrees to purchase the Purchased Property, and any other interests in real or personal property of Seller represented by or derived from ownership of the Purchased Property.

**4. Purchase Price.**

4.1 Purchase Price. The Purchase Price for Purchased Property Seller’s covenants and obligations hereunder to be paid at Closing, subject to the terms and conditions of this PSA, is:

Corner Shares Price Per Share:	\$6,500.00
Irrigation Improvement Price Per Share:	\$1,500.00
Number of Corner Shares:	111
Total Purchase Price for Corner Shares and Irrigation Improvements:	\$888,000.00

Utilities shall deliver the Total Purchase Price for Corner Shares and Irrigation Improvements (the “Total Purchase Price”) to the Title Company to be held in an escrow account (the “Escrow Account”) on or before the Closing Date. On the Closing Date, provided the PSA has not been terminated in accordance with Sections 5.1, 5.2, 5.3, 6.3, 6.4, 7.2, and 15 (or becomes null and void pursuant to Section 16), and upon satisfaction of all Closing Contingencies in Section 7.1 and receipt of Seller’s Closing Deliveries in Section 7.4 , the Title Company shall remit the total Purchase Price to Seller, subject to satisfaction of any financial encumbrances as required to deliver marketable title, free, clear and unencumbered, to the Corner Shares and the Corner Share Water Rights to Utilities.

**5. Title.**

5.1 Corner Shares. The Parties agree that in order to consummate the transaction contemplated by this PSA, marketable title to the Corner Shares must be held by Seller so that Seller may convey marketable title to the Corner Shares to

Utilities free, clear, and unencumbered, and Utilities' obligations under this PSA are specifically conditioned and contingent on Seller possessing such title prior to Closing. Notwithstanding any other provisions of this PSA, if Seller does not have such marketable title in the Corner Shares as of the Closing Date, Utilities may terminate this PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

5.2 Dry-Up Covenants. The Parties agree that Seller must have sufficient right, title, and interest in the Farm so as to be able to deliver sufficient and appropriate Dry-Up Covenants that will be subject only to those matters of title approved by Utilities prior to Closing. Notwithstanding any other provisions of this PSA, if Seller is unable to deliver satisfactory Dry-Up Covenants, as required in Section 7.1.2, to Utilities as of the Closing Date, Utilities may terminate this PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

5.3 Farm. The Parties agree that in order to consummate the transaction contemplated by this PSA, Seller must own the Farm in fee simple so that the Center Pivot Sprinklers can be installed, the Parcel Corners can be removed from irrigation, and the necessary easements, encumbrances and restrictions can be placed on the Farm, and that Utilities' obligations under this PSA are specifically conditioned and contingent on Seller possessing such title prior to Closing. Notwithstanding any other provisions of this PSA, if Seller does not own the Farm in fee simple as of the Closing Date, Utilities may terminate this PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

## 6 Due Diligence.

6.1 Due Diligence. Utilities shall have up to and including July 16, 2024 (the "Due Diligence Period") to perform, at its expense, due diligence on the Purchased Property and the Farm ("Due Diligence"). Notwithstanding the foregoing, Utilities may extend the Due Diligence Period one time at its sole discretion by thirty (30) days upon notice to Seller at least ten (10) days prior to the expiration of the Due Diligence Period. Due Diligence may include, but is not limited to, investigating the title to the Corner Shares and the Farm; investigations and inspections of the Farm; appraisal of the Corner Shares; HCU analysis of the Corner Share Water Rights; review of encumbrances against the Corner Shares and the Farm; review of contracts related to the Corner Shares or the Farm; and environmental site assessments of the Farm. To the extent they are able, Seller shall provide Utilities, its agents and contractors, reasonable access to the Farm to perform such Due Diligence.

6.2 Due Diligence Documents. On or before the date that is ten (10) days after the Effective Date, Seller shall deliver to Utilities complete and legible copies of all documents or reports in the possession of Seller or Seller's agents, engineers, and/or

consultants, or under Seller's control, or otherwise reasonably available to Seller or Seller's agents, engineers, and/or consultants including without limitation the following to the extent that such documents exist: (1) a complete copy of the certificates for the Corner Shares (front and back); (2) a legal description of the Farm and the Parcel Corners, if available; (3) for any share or share certificate of the Corner Shares that is held or issued in the name of Seller or of some other person or entity, proof of Seller's authority to assign and convey the other named person's or entity's interest in the Corner Shares; (4) for any share or share certificate of the Corner Shares that is held or issued in the name of Seller and of an encumbrance holder, a copy of any deed of trust, mortgage, pledge, lien, or other encumbrance on the Corner Shares, together with (a) proof of the prior release of the encumbrance on the Corner Shares, or (b) a written statement from the encumbrance holder stating (i) the amount of any payment required to be made to allow the release of the encumbrance on the Corner Shares, and (ii) that it will release any encumbrance upon the Corner Shares at Closing; (5) documents describing the Corner Share Water Rights; (6) such other documents as Utilities may reasonably request to prove that Seller owns the Corner Shares and can deliver the same free and clear of all encumbrances at Closing; (7) a copy of any and all documents (such as leases) establishing or identifying possessory interests held by third parties in the Farm, the Corner Shares or the Corner Share Water Rights that are in Seller's possession, and written disclosure of any such document of which Seller have knowledge but not possession; (8) information and documents concerning the historical use of the Corner Share Water Rights including the historical consumptive use and the historical stream depletions of such water rights; (9) any title commitments, title opinions, title abstracts, surveys, drawings, legal descriptions, aerial or other photographs related to the Corner Shares, the Corner Share Water Rights, and/or the Farm; (10) any reports evaluating the Corner Shares, the Corner Share Water Rights, or any diversion records or engineering reports, court decrees, administrative agency documents, or appraisals pertaining to the Corner Shares or the Corner Share Water Rights; (11) any operating agreements and/or ditch agreement related to the Corner Shares or Corner Share Water Rights; (12) any and all communications regarding the Corner Shares and the Corner Share Water Rights, with a ditch company or a state agency; and (13) any engineering reports, engineering design, cost estimates, bids, or other documentation regarding the infrastructure used with respect to the Corner Shares, or the Corner Share Water Rights, (collectively the "Due Diligence Documents"). The Due Diligence Documents shall also include any information known to Seller or in Seller's control or possession or which may be reasonably obtained by Seller related to future or expectant encumbrances on the Corner Shares and/or the Farm and encumbrances that will come into being upon Seller taking title to the Farm, and the Corner Shares. During the Due Diligence Period, Seller shall cooperate with Utilities to have a land survey plat of the Farm and an as built survey of the Center Pivot Sprinklers prepared by a professional land surveyor at Utilities cost at least thirty (30) days prior to the expiration of the Diligence Period. The surveys will be considered Due Diligence Documents. In addition, if Seller comes into possession or control or receives knowledge of any Due Diligence Documents that have not been disclosed to Utilities, Seller will provide copies of such Due Diligence Documents to Utilities within three (3) business days of such Due Diligence Documents coming into Seller's possession and/or control. Seller will request copies of any such information not within Seller's

possession or control within three (3) business days of becoming aware of such Due Diligence Documents.

6.3 Objections. Utilities shall have the right to object, in its sole subjective discretion, by providing written notice to Seller (each a “Notice of Objection”) to any title defect or other unsatisfactory condition revealed by Due Diligence and/or the Due Diligence Documents (each an “Objection”) before expiration of the Due Diligence Period or if Seller provides a Due Diligence Document to Utilities after the expiration of the Due Diligence Period, then Utilities may provide such Notice of Objection within ten (10) business days of receiving such Due Diligence Document(s) from Seller. In the event of a Notice of Objection, Seller shall have ten (10) days from the receipt of notice within which to take such actions (if any) which Seller deems appropriate to cure such Objections. Utilities’ failure to deliver a Notice of Objection within the time periods described in this Section 6.3 shall be deemed to establish Utilities’ satisfaction with any title commitments, surveys, Due Diligence and Due Diligence Documents. If at the end of Seller's cure period Seller has not corrected to Utilities’ satisfaction the Objections, Utilities may (1) waive its Objections and consummate the transaction without a reduction in the Purchase Price, (2) extend Closing for a reasonable period of time for Seller to correct the Objections, if Seller confirms to Utilities in writing that Seller intends to continue to diligently pursue the necessary corrective action or (3) terminate this Agreement. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

6.4 Termination during Due Diligence Period. Notwithstanding any other provisions of this PSA, Utilities, in its sole subjective discretion, may terminate this PSA at any time during the Due Diligence Period by providing notice to Seller prior to the expiration of the Due Diligence Period. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

## 7 Closing.

7.1 Closing Contingencies. The Parties agree that in order to consummate the transaction contemplated by this PSA, the following must occur (collectively the “Closing Contingencies”) prior to or at Closing:

7.1.1 Resolution of Objections: A written Resolution of Objections to any Notice of Objections provided by Utilities, if any.

7.1.2 Dry-Up Covenants. Utilities and Seller will enter into dry-up covenants (the “Dry-Up Covenants”) substantially in the form attached hereto as Exhibit B. The Dry-Up Covenants will be recorded in the real property records of Bent County, Colorado.

7.1.3 Return Flow and Augmentation Facility Easements. Seller shall grant easements to Utilities, in a form substantially the form attached hereto as Exhibit C (the “Return Flow Easements”). In the event the location of the Return Flow Easements cannot be determined prior to Closing, the Return Flow Easements will be blanket

easements covering the entire Farm parcel(s) and will include a mechanism and timeline for reducing the size of the Return Flow Easements to locations on the Farm where the facilities will be located once built. The Return Flow Easements will be recorded in the real property records of Bent County, Colorado.

7.1.4 FLCC Approval. The transfer of ownership of the Corner Shares from Seller to Utilities as contemplated by this PSA must be approved in writing by the FLCC Board of Directors, in their discretion, to the extent that the FLCC articles of incorporation, bylaws, or other rules and regulations give the FLCC Board of Directors approval authority over the transaction contemplated by this PSA.

7.1.5 City Council Approval. The transaction contemplated by this PSA must be approved by the City Council of the City of Colorado Springs, Colorado ("City Council), in the City Council's sole discretion, by resolution prior to Closing.

7.1.6 Historic Consumptive Use Analysis. Utilities will conduct an analysis of the HCU of the Corner Shares and the Corner Share Water Rights, as part of its Due Diligence. Utilities, in its sole discretion, must be satisfied with the results of this historic consumptive use analysis of the Corner Shares and the Corner Share Water Rights to complete the transaction contemplated by this PSA.

7.2 Utilities' Obligation to Close. Utilities' obligation to close the transaction contemplated in this PSA is contingent on the satisfaction or Utilities' waiver of the Closing Contingencies. If these Closing Contingencies are not met or waived by Utilities as of the Closing Date, then the Parties may agree to delay Closing for a mutually agreed upon period of time, or Utilities may terminate this PSA by providing notice to Seller in which case neither Party shall have any further obligations under this PSA. In the event not all Closing Contingencies are satisfied, Utilities shall provide written notice of the satisfaction, rejection, or waiver of each of the Closing Contingencies not yet satisfied on or before the date that is two (2) business days prior to the Closing Date. Utilities' failure to provide notice with respect to any of the unsatisfied Closing Contingencies shall be deemed Utilities' waiver of such unsatisfied Closing Contingencies. In the event one or more Closing Contingencies is not satisfied or waived (or deemed waived) on or before the Closing Date, this PSA shall terminate and neither Party shall have any further obligations under this PSA.

7.3 Closing Date. The Closing on this PSA shall occur at the office of the Title Company (or other mutually agreeable location) on the Closing Date as defined in paragraph 2.2 above.

7.4 Seller Closing Deliveries. On or before the Closing Date, Seller shall deliver or cause to be delivered to the Title Company the following items:

7.4.1 Signed special warranty deed for the Corner Shares and any other real property interest represented by the Corner Sharers from Seller free and clear of any

liens and encumbrances, except those permitted by Utilities, to Utilities substantially in the form attached hereto as Exhibit D (the “Special Warranty Deed”).

7.4.2 As required by FLCC bylaws, the original certificate(s) numbered 9803 for the Shares, with the 111 Corner Shares endorsed to Utilities.

7.4.3 One or more separate share assignments from Seller to Utilities for the Corner Shares substantially in the form attached hereto as Exhibit E, and acceptable to FLCC, which assignment shall, if necessary, include the appointment of an officer of FLCC as attorney-in-fact with authority to change the ownership records of FLCC with respect to the Corner Shares (the “Corner Share Assignments”).

7.4.4 Either (a) valid releases of any encumbrances on the Corner Shares and the Corner Share Water Rights; (b) valid joinders subordinating the encumbrances to Utilities’ interest in such shares and water rights; or (c) newly issued stock certificates without any such encumbrances. The releases or joinders must be in a form reasonably acceptable to Utilities.

7.4.5 Either (a) valid releases of any encumbrances on the Farm, or (b) valid joinders subordinating the encumbrances to the Return Flow Easements and Dry-Up covenants. The releases or joinders must be in a form reasonably acceptable to Utilities.

7.4.6 Signed Dry-Up Covenants.

7.4.7 Signed Return Flow Easements.

7.4.8 Any assignment and assumption agreements necessary to assign existing easements from Seller to Utilities executed by the individuals required and authorized to execute such agreements, including any required consents of property owners.

7.4.9 Other such affidavits, instruments, agreements or other documents that may be reasonably required to complete the transaction contemplated by this PSA.

7.5 Utilities’ Closing Deliveries. On or before the Closing Date, Utilities shall deliver or cause to be delivered to the Title Company the following items:

7.5.1 The Purchase Price in good funds.

7.5.2 The Special Warranty Deed (as defined above) countersigned by the individuals authorized to accept such deed from Seller.

7.5.3 The Corner Share Assignments and assumption agreements signed by the individuals authorized to accept such assignments from Seller.

7.5.4 The Dry-Up Covenants countersigned by the individuals authorized to accept such covenants from Seller.

7.5.5 The Return Flow Easements countersigned by the individuals authorized to accept such easements from Seller.

7.5.6 Any assignment and assumption agreements necessary to assign existing easements from Seller to Utilities countersigned by the individuals authorized to execute such agreements.

7.5.7 Other such affidavits, instruments, agreements or other documents that may reasonably be required to complete the transactions contemplated under this PSA.

7.6 Title Company. Utilities will select the Title Company who shall be a third-party commercially reputable title company or financial institution. The Closing Deliveries will be made to the Title Company. Seller and Utilities will cooperate with the Title Company to enable the Title Company to prepare and deliver documents required for Closing including, without limitation, delivering to the Title Company any and all affidavits, instruments, and documents as are customarily required in connection with a transfer of water rights and real property in Bent County, Colorado.

8 Assessments. Seller agrees to fully pay and continue to pay any and all assessments imposed by FLCC on the Corner Shares up to and including the Closing Date, even if such assessments are not due until after Closing. Any unpaid assessments incurred prior to the Closing Date and remaining unpaid at the time of Closing, including any late payment fees and interest, if any, shall be withheld from the Purchase Price and paid to FLCC by the Title Company. Utilities shall assume responsibility for any and all assessments imposed by FLCC on the Corner Shares after the Closing Date.

9 Change of Water Rights. Utilities intends to seek administrative approval of a temporary change of use or file a water rights change case in water court for the Corner Share HCU or apply to the water court to change the Corner Share Water Rights HCU, which will have the primary purpose of adding as permitted uses of the Corner Share Water Rights all beneficial uses for which Utilities may use the water, and to prosecute an exchange application in water court (in the same or different proceedings) to exchange or otherwise use the applicable HCU in Utilities' municipal system. Utilities shall be solely responsible for all costs associated with the proceedings required to obtain any required approvals, permits, or decrees to permit it to change the type, time, and place of use of the Corner Share Water Rights ("Change Proceedings"). Seller shall have the right to participate, at its own expense, in any Change Proceedings, provided, however, that Seller will cooperate fully with Utilities in any such proceedings, and will not take any action to impair, impede, or interfere with Utilities' ability to obtain any such required authorization.

10 Regulatory Approvals. Seller acknowledges that Utilities' use of the Corner Shares may require approval from the FLCC, Bent County, or other federal, state, and/or local government authorities. Seller will cooperate fully with Utilities to obtain any necessary FLCC,

Bent County, and other regulatory and administrative approvals and will not take any action to impair, impede, or interfere with Utilities' ability to obtain any required approval. Seller's obligations pursuant to this Section 10 shall survive and be enforceable after Closing.

11 **Shared Lateral Agreements.** Seller acknowledges and agrees that the Corner Shares as well as other FLCC shares that are owned by Utilities may be delivered through a shared lateral ditch that crosses and/or abuts the Farm. Seller further acknowledges that Utilities may seek to remove the Corner Shares and the other FLCC shares it owns from laterals or otherwise utilize laterals to transport the water associated with said shares to other properties or the Arkansas River, which may require Utilities to enter into agreements with Seller, third parties who utilize laterals and/or the FLCC. Seller will cooperate and negotiate with Utilities in good faith to obtain any such agreements, and/or agreements to repair, maintain, and or improve laterals so long as the proposed agreements do not unduly impact Seller's Farm, farming operations, or water rights. Seller's obligations pursuant to this Section 10 shall survive and be enforceable after Closing.

12 **Commissions.** Utilities and Seller both represent and warrant to each other that they have not entered into an agreement with a broker or other party requiring the payment of fees or commissions with respect to the transaction contemplated by this PSA. Notwithstanding the foregoing, Seller shall be responsible for any brokers', finders', or similar fees from any third-party claiming under Seller and Utilities shall be responsible for any brokers', finders', or similar fees from any third-party claiming under Utilities.

13 **Transfer Fee and Closing Costs.** Utilities will pay the transfer costs imposed by FLCC with respect to the transfer of the Corner Shares. The Parties shall share equally in the payment of all closing costs, including Title Company costs, and recording fees.

14 **Warranties and Representations of Seller.** In addition to Seller's other representation and warranties contained in this PSA, Seller hereby represents, warrants, and agrees, jointly and severally, that:

14.1 Seller has full power to enter into this PSA and to carry out the transactions contemplated by this PSA.

14.2 This PSA and its execution and delivery to Utilities will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed or other agreement of Seller to which it is a party or otherwise bound. Seller affirms its representations and warranties made elsewhere in this PSA, including those contained in the recitals to this PSA.

14.3 As of the Effective Date, Seller is the owner of the Farm in fee simple, and the FLCC Shares.

14.4 There is no litigation pending or threatened that in any manner affects the Corner Shares.

14.5 The execution and delivery of this PSA and the performance of all obligations hereunder by Seller does not and will not require the consent of any third party other than FLCC.

14.6 Seller will not enter into any agreements or contracts concerning the Corner Shares between the Effective Date and Closing or termination of this PSA that will impact Seller's ability to consummate the transaction contemplated herein.

14.7 By proceeding with Closing the transaction contemplated herein, Seller will be deemed to have represented, warranted, and agreed, jointly and severally, that the following are true and accurate as of the Closing Date:

14.7.1 Seller owns the Farm in fee simple.

14.7.2 Seller is the sole owner of the Corner Shares free and clear of any encumbrances.

14.7.3 The Corner Shares are not subject to a conservation easement or any other limitations or restrictions not stated in the FLCC articles of incorporation, bylaws, and/or rules and regulations.

14.7.4 No third-party claims any right, title, or interest in or to all or any portion of the Corner Shares or Corner Share Water Rights.

14.7.5 Seller has received no notice of any violations of any law, code, ordinance, rule or regulation or insurance policy affecting the Corner Shares.

14.7.6 There is no litigation pending or, to the best of Seller's knowledge, threatened that in any manner affects the Purchased Property.

15 **Seller Covenants.** Between the Effective Date and the Closing Date, Seller shall promptly (and in all cases, prior to the Closing) notify Utilities in writing of any fact, event, circumstance or action that is or becomes known to Seller that: (a) if known on the Effective Date, would have been required to be disclosed; or (b) the existence or occurrence of any circumstance which would cause Seller's representations or warranties under this PSA to not be correct or complete. Utilities may elect within three (3) business days after receipt of Seller's notice under this Section, but prior to the Closing, to terminate this PSA by giving notice to Seller (and the Title Company as applicable). In the event Utilities elects to terminate the PSA, the Parties shall have no further obligation to each other under this PSA.

16 **Appropriations.** This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any

financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

17 **Notices.** Any and all notices, requests, demands, or other communications (collectively, “Notices”) under this PSA shall be in writing and given by (1) an established express delivery service that maintains delivery records requiring a signed receipt; (2) hand delivery; or (3) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address that the Parties may designate by Notice in the above manner:

To Utilities:

Colorado Springs Utilities  
ATTN: Manager, Water Resources  
P.O. Box 1103, Mail Code 1825  
Colorado Springs, CO 80947-0950

With copies to:

City Attorney’s Office – Utilities Division  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575

To Seller:

Alan Dean  
31452 County Road 12  
Las Animas, CO 81054

18 **Publicity.** The Parties (including any representatives, agents or affiliates) shall not issue any press release, statement, or other public communication concerning the transaction contemplated herein without the prior written consent of the other Party.

19 **Amendment.** This PSA may be extended, modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by both Parties with the same formality as this PSA.

20 **Waiver.** Any waiver of any breach of any provision of this PSA by any Party shall not constitute a continuing waiver of any subsequent breach of either the same or any other provision of this PSA.

21 **Entire Agreement.** This PSA represents the entire agreement of the Parties with respect to the purchase and sale of the Corner Shares and neither Party has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof, are merged in this PSA.

22 **Headings for Convenience Only.** Section headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this PSA.

23 **Binding Effect and Assignability.** This PSA and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, heirs, and assigns, if any. Seller may not assign their rights or delegate their duties under this PSA without the prior written consent of Utilities, which Utilities may withhold in its sole discretion. Utilities shall be entitled to assign its rights and obligations under this PSA without the consent of Seller.

24 **Governing Law and Venue.** This PSA and its application shall be construed in accordance with the laws of the State of Colorado and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. Should it be necessary to institute court proceedings concerning this PSA, venue shall be in the District Court for El Paso County, Colorado.

25 **Survival of Representations.** Each and every representation, warranty, covenant, promise, and payment contained in this PSA shall not merge in any deed, assignment, covenant, escrow agreement, easement, lease or any other document, but shall survive at the Closing, and be binding and obligatory upon each of the Parties hereto.

26 **Multiple Originals.** This PSA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same agreement.

27 **Interpretation.** Except as otherwise provided herein, nouns, pronouns, and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to policy, procedure, law, regulation, rule, or document shall mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time.

28 **Defaults and Remedies.** In the event Seller fails to perform their obligations under this PSA, Utilities may avail itself of any legal and/or equitable remedies available, including without limitation the remedy of specific performance. In the event Utilities fails to perform its obligations under this PSA, Seller may avail themselves of any legal remedies available. Provided, however, that both Parties expressly waive the right to seek consequential or punitive damages.

29 **No Attorney's Fees and Costs.** In the event of any litigation, mediation, or other dispute resolution proceeding arising out of or related to this PSA, each Party agrees to be

responsible for its own attorney's fees and other professional fees, costs, and expenses associated with such proceedings.

30 **Non-Severability; Effect of Invalidity.** Each Section of this PSA is intertwined with the others and not severable unless by mutual consent of Utilities and Seller or as provided for below. If any provision or portion of this PSA or the application thereof to any person or circumstance shall, at any time or to any extent, be held invalid or unenforceable for any reason by a court of competent jurisdiction, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this PSA, or the application of such provisions to persons or circumstances other than those which are held invalid or unenforceable, shall not be affected thereby.

31 **Intent of Contract.** This PSA is intended to describe the rights and responsibilities of and between Utilities and Seller and is not intended to, and shall not be deemed to, confer rights upon any person or entities not signatories hereto, or to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of Utilities or any governmental entity not a party hereto.

32 **Non-Business Days.** If any date for any action under this PSA falls on a Saturday, Sunday, or day that is a "holiday" as such term is defined in C.R.C.P. 6, then the relevant date shall be extended to the next business day.

33 **Confidentiality.** Seller acknowledges that Utilities is a public entity subject to the provisions of the Colorado Open (Public) Records Act, C.R.S. § 24-72-201 *et seq.*, Any confidential and/or proprietary information that either Party discloses to the other with respect to this PSA shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure.

34 **Exhibits.** The exhibits attached to this PSA are hereby incorporated into this PSA.

35 **Counterparts and Electronic Signatures.** This PSA and other documents/agreements required thereby may be executed in multiple counterparts by the parties. All counterparts so executed shall constitute one agreement that is binding on all Parties. Each counterpart shall be deemed an original of this PSA. Documents executed, scanned and signed electronically shall be deemed original signatures for the Purposes of this PSA.

36 **Attorney Representation.** Each Party has been represented by and has had an opportunity to consult legal counsel in connection with the negotiation and execution of this PSA. No provision of this PSA shall be construed against or interpreted to the disadvantage of either Party by reason of such Party having drafted or being deemed to have drafted such provision.

*[the remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed this PSA as of the Effective Date defined above.

**THE CITY OF COLORADO SPRINGS, COLORADO  
ON BEHALF OF ITS ENTERPRISE  
COLORADO SPRINGS UTILITIES**

Travas Deal  
Travas Deal (May 24, 2024 09:23 MDT)

Travas Deal  
Chief Executive Officer

Date: May 24, 2024

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney's Office - Utilities Division

**SELLER:**

  
Alan Dean

5-1-2024  
Date:

**Exhibit A**  
Legal Description of Farm

Township 22 South, Range 52, West of the 6<sup>th</sup> P.M.

Section 22: S/2NW/4, N/2SW/4, SE/4SW/4, W/2SE/4, SW/4NE/4,  
EXCEPT a tract of land containing 20 ACRES, more or less, as described in Deed between Edward P. Dean, Grantor, and the State of Colorado, for the use and benefit of the Department of Natural Resources, acting by and through the Wildlife Commission and Division of Wildlife, Grantee, recorded April 28, 1983 in Book 370, Page 305, Bent County, Colorado Records.

Section 27: E/2

## **EXHIBIT B**

### Form Dry-Up Covenants

#### **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT**

THIS DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between Alan Dean (“Dean”), for himself and his successors, heirs, and assigns, as Grantor, and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation on behalf of its enterprise, Colorado Springs Utilities (“Utilities”), its successors, heirs, and assigns, as Grantee (together, the “Parties”).

#### **Recitals**

**WHEREAS**, Dean owns certain real property in Bent County, Colorado, legally described on Exhibit A, attached hereto (the “Farm”);

**WHEREAS**, the Farm was historically flood irrigated with, among other things, 450 shares of capital stock in The Fort Lyon Canal Company, a Colorado non-profit corporation (“FLCC”), currently represented by stock certificate number 9803 (the “FLCC Shares”);

**WHEREAS**, Dean has installed center pivot sprinklers, including support infrastructure (e.g., ponds, pumps, piping, etc.), which will be used to irrigate the Farm (the “Center Pivot Sprinklers”);

**WHEREAS**, with the Center Pivot Sprinklers installed, Dean will no longer irrigate the corners of the Farm (the “Parcel Corners”) with water attributable to the FLCC Shares.

**WHEREAS**, Dean and Utilities entered into that certain purchase and sale agreement signed by the Parties on \_\_\_\_\_, 2024, under which Dean agreed to sell and Utilities agreed to purchase one hundred and eleven (111) of the FLCC Shares which were previously utilized to irrigate the Parcel Corners (the “Corner Shares”);

**WHEREAS**, Dean and Utilities enter into this Agreement as additional consideration for Dean’s sale of the Corner Shares to Utilities;

**WHEREAS**, concurrent with the execution of this Agreement, Dean has transferred and conveyed the Corner Shares to Utilities as part of the consummation of the Purchase and Sale Agreement;

**WHEREAS**, FLCC will issue new stock certificate(s) to Utilities to represent the Corner Shares;

**WHEREAS**, once the new stock certificate(s) have been issued, this Agreement will include or be amended to include the stock certificate number(s) associated with the Corner Shares;

**WHEREAS**, Dean acknowledges that Utilities intends to change the use of the Corner Shares to include all municipal and industrial uses in a change of water rights proceeding before the Water Court for Division 2 (the “Water Court Change Case”), and temporarily pursuant to a substitute water supply plan (“SWSP”) or interruptible water supply agreement (“IWSA”), Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas River Basin (“Rule 14 Plan”), and/or Compact Compliance Plan pursuant to Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado (“Rule 10 Plan”) approved by the Office of the State Engineer (collectively the “Water Court Approvals”);

**WHEREAS**, Dean further acknowledges that Utilities’ use of the Corner Shares may require approval (the “Regulatory Approvals”) from the FLCC, Bent County, or other federal, state, and/or local government authorities (collectively, the “Regulatory Authorities”);

**WHEREAS**, Dean further acknowledges that the Water Court Approvals and/or the Regulatory Approvals may require, as terms and conditions of such approvals that the Parcel Corners be dried up and revegetated; and

**WHEREAS**, Dean desires to grant Utilities the covenants contained herein (the “Covenants”) to affirm Dean’s agreement to permanently cease all use of the Corner Shares on the Parcel Corners, to confirm Dean’s obligation to dry-up and revegetate the Parcel Corners, and to provide for a right of entry and easements for the Regulatory Authorities, Utilities and its agents, and for Utilities’ successors and assigns, upon the Farm for the purposes of enforcing this Agreement and any Water Court Approvals or Regulatory Approvals.

**NOW, THEREFORE**, in consideration of Utilities’ purchase of the Corner Shares, Dean hereby covenants, agrees, and grants as follows:

**Section 1. Real Covenant for Dry-Up.**

(A) Dean covenants and agrees to cease irrigating the Parcel Corners with any of the remaining FLCC Shares after installation of the Center Pivot Sprinklers, except to the extent permitted by the terms of this Agreement. Furthermore, Dean agrees to cease any and all use of the Corner Shares for any purposes whatsoever after installation of the Center Pivot Sprinklers.

(B) Dean covenants and agrees that the Parcel Corners will not be irrigated, including for purposes of revegetation, with any source of water unless the water (a) is water available to Dean from sources other than the FLCC; and (b) is specifically authorized by a decree of the Water Court for Water Division No. 2, a SWSP or replacement plan, or well permit approved by the Colorado State Engineer. Dean shall provide Utilities with advance notice of its intent to irrigate the Parcel Corners under this subsection 1(B). If Dean continues to irrigate the Parcel Corners in accordance with this subsection, Dean shall control noxious weeds on the Parcel Corners in accordance with subsection 2(K) and plant a cover crop when the Parcel Corners are fallowed for one year or more.

(C) Dean shall comply with all terms and conditions included in the *Kansas v. Colorado* Operating Procedures for Administration of Parcels Claimed for Augmentation Credit (“*Kansas v. Colorado* Dry-Up Agreement”), a copy of which is attached as Exhibit B.

(D) Dean covenants and agrees that in addition to the dry-up requirements set forth above, Dean also shall meet any dry-up obligations imposed by any Water Court Approvals or Regulatory Approvals.

(E) Successful completion of dry-up of the Parcel Corners will be determined by Utilities in its reasonable discretion, or by the Regulatory Authorities as required by the Regulatory Approvals or other law. In the event the Water Court retains jurisdiction in the Water Court Change Case to certify successful completion of dry-up of the Parcel Corners as a condition of transferring the consumptive use credit available to Utilities for the Corner Shares, then the determination of whether dry-up of the Parcel Corners has been successfully completed will be made by the Water Court.

## **Section 2. Real Covenant for Revegetation.**

(A) As used in this Agreement, the term “revegetation” means ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation and terrain prevailing on the Parcel Corners, with weeds adequately controlled.

(B) In the event Dean is irrigating the Parcel Corners in accordance with the terms and conditions in subsection 1(B) above, the revegetation obligations described in this Section 2 do not apply.

(C) Dean shall permanently discontinue irrigation of some portion or all of the Parcel Corners.

(D) Within 180 days of executing this Agreement, Utilities will confer with Dean regarding the intended future use of the dried-up Parcel Corners or portions thereof, including whether the dried up Parcel Corners or portions thereof will be used for development, pasture, or other uses. Utilities and Dean will determine whether the future use of the Parcel Corners, or portions thereof, being removed from irrigation will require the dried-up Parcel Corners, or portions thereof, to be revegetated in accordance with the terms of this Agreement. If Utilities determines revegetation is required or if revegetation is required by the Water Court Approvals or Regulatory Approvals, Utilities and Dean will coordinate in the development of a revegetation and weed control plan setting forth the requirements for revegetation of and noxious weed control on the dried-up portions of the Parcel Corners (the “Revegetation and Weed Control Plan”). The Revegetation and Weed Control Plan will be prepared by a qualified expert(s) chosen by Utilities in its sole discretion and expense and shall be in accordance with the requirements of any Water Court Approval or Regulatory Approval and at a minimum contain the information and requirements set forth in Exhibit C. Utilities shall establish revegetation and control noxious weeds on the Parcel Corners in accordance with the Revegetation and Weed Control Plan at its expense. Utilities and Dean agree to work cooperatively to establish revegetation and control

noxious weeds on the Parcel Corners in accordance with the revegetation and Weed Control Plan. Dean shall in no way be obligated to perform any work to establish revegetation or control noxious weeds on the Parcel Corners, however, after conferral with Utilities, Dean may agree to perform work to establish revegetation and control noxious weeds on the Parcel Corners in accordance with the Revegetation and Weed Control Plan, and Utilities shall reimburse Dean for the reasonable costs of such work. Dean shall not undertake any work in accordance with the Revegetation and Weed Control Plan before consulting with, and without Utilities Approval.

(E) To the extent that successful establishment and maintenance of revegetation may require water for an interim period, Utilities and Dean shall coordinate to provide such water. If the Parties agree to use Dean's water, Utilities shall reimburse Dean for the reasonable costs of such water, including the cost power for pumping any wells used by Dean to provide such water. If the Parties agree to use Utilities water, Utilities shall reimburse Dean for the reasonable costs to convey such water using Dean's infrastructure. Potential sources of such water are limited to those sources approved and used pursuant to subsection 1(B) above, or the Corner Shares. Dean agrees that any irrigation of the Corner Parcels for revegetation shall be accomplished using a metered irrigation system that is not the Center Pivot Sprinklers. Utilities will determine whether water is required for an interim period to establish and maintain revegetation. Until satisfaction of the requirements of the Revegetation and Weed Control Plan, neither Dean nor Utilities shall remove or alter laterals, headgates, or other structures necessary to accomplish irrigation of all or a portion of a Parcel Corner during the establishment of revegetation.

(F) No later than the end of the tenth growing season after irrigation for agricultural purposes has permanently ceased on the Parcel Corners or portion thereof (the "Revegetation Deadline"), revegetation shall be established by Utilities, and Dean shall maintain revegetation on the Parcel Corners in accordance with the Revegetation and Weed Control Plan. For revegetation to be "maintained" on the Parcel Corners, such revegetation must have been established for more than one growing season. Utilities shall pay all costs of revegetation. Dean shall pay all costs of weed control and maintaining revegetation except for the costs of any water required for establishing and maintaining revegetation in accordance with Section 2(E) of this Agreement.

(G) The species of grass or other plants used for revegetation may not include grasses or other plants defined as "noxious" under the provisions of the Colorado Noxious Weed Act, Article 5.5 of Title 35, C.R.S., and may not include alfalfa or other highly water-consumptive species.

(H) Dean covenants and agrees that in addition to the revegetation requirements imposed by this Agreement, Dean shall meet any lawful revegetation obligations imposed by any Water Court Approvals or Regulatory Approvals. If a decree is entered in the Water Court Change Case or a requirement imposed under a Regulatory Approval related to revegetation and weed control on the Parcel Corners that are not included in the Plan, the Parties shall negotiate in good faith regarding any amendments to the Plan.

(I) Successful satisfaction of the requirements of the Revegetation and Weed Control Plan will be determined by Utilities in the exercise of reasonable discretion, or the Water Court or other regulatory body, as applicable. The Revegetation Deadline may be extended by agreement

of the Parties upon a showing that efforts to establish and maintain revegetation have been materially hindered due to circumstances beyond the Parties' control, including fire, hail storms, wind storms, tornadoes, flooding, extreme drought and freezes after May 15 and before September 15 of any year from the year of execution of this Agreement and including the year of the Revegetation Deadline, so long as such extension is not in conflict with any Water Court Approval or Regulatory Approval.

(J) As an alternative to meeting the obligations imposed by this Section 2 or any Revegetation and Weed Control Plan, Dean may demonstrate to Utilities' satisfaction that the Parcel Corners have been developed with structures and improvements such that the Parcel Corners are not susceptible to erosion or noxious weeds.

(K) Once Utilities has completed revegetation of the Parcel Corners, Dean shall maintain the revegetation and may not engage in any land use practice that will kill all or a substantial or material part of the vegetation planted on the Parcel Corners for the purposes of revegetation. This prohibition includes any tillage, or other mechanical means to break the soil, cultivation, or grazing practices including, but not limited to, dry-land farming, that will kill all or a substantial or material part of the revegetation plantings growing on the land or other native plant cover. Upon completion of the revegetation, Dean will control noxious weed growth on the Parcel Corners, and shall do so in a manner that does not materially harm the revegetation plantings and the vegetative ground cover resulting from the revegetation and is in compliance with the Revegetation and Weed Control Plan and all Water Court Approvals and Regulatory Approvals.

(L) Dean may graze livestock on the revegetated land, but only pursuant to a grazing plan approved in advance by Utilities and the Regulatory Authorities to the extent required by the Regulatory Approvals or other law.

(M) Dean shall be liable to Utilities for any and all damages or costs incurred by Utilities, as a result of Dean's negligent destruction or failure to maintain the revegetation plantings.

(N) This Agreement shall not be interpreted to prohibit the subdivision of the Parcel Corners or the construction of buildings, residences, ponds, pumping forebays, water storage structures, or other improvements on the Parcel Corners.

### **Section 3. Continued Operation of the Farm.**

(A) Dean covenants and agrees that in addition to the other requirements imposed by this Agreement, Dean shall continue to use the Farm for agricultural purposes.

(B) If Dean conveys a Conservation Easement pursuant to C.R.S. § 38-30.5-101 et. seq., which contains the requirement that the Farm, and the remaining 339 FLCC Shares belonging to Dean and historically used to irrigate the Farm, shall continue to be operated solely for agricultural purposes, then the Parties will amend and re-record this Agreement to remove this Section 3. The Conservation Easement must at a minimum be perpetual in nature, encumber the entirety of the Farm and Dean's remaining 339 FLCC Shares, and be recorded in the Real

Property Records of Bent County, Colorado. The Conservation Easement must explicitly ratify Utilities property interests in the Farm including but not limited to this Agreement, and any future amendments to or restatements thereof. The Conservation Easement must be conveyed to an organization that is qualified to hold conservation easements under the laws of the State of Colorado. Pursuant to C.R.S. 38-30.5-104(5) Dean must give the FLCC Board of Directors sixty (60) days' notice in accordance with the articles of incorporation and bylaws of the FLCC before conveying a Conservation Easement which encumbers Dean's remaining 339 FLCC Shares. Dean shall provide Utilities an opportunity to review the Conservation Easement at least 120 days before conveyance, and Utilities shall have the opportunity to comment on the Conservation Easement. If, in Utilities sole discretion, the Conservation Easement extinguishes or frustrates Utilities' interest in the Farm, then Utilities shall not be required to amend this Agreement to remove this Section 3.

#### **Section 4. Right of Entry and Easements.**

(A) Dean hereby grants to Utilities, its successors, assigns, representatives, agents, and its invitees, including but not limited to, the Colorado Division of Water Resources, the Water Court, and any other regulatory or administrative body with jurisdiction over dry-up and revegetation of the Corner Parcels, including the Regulatory Authorities, a perpetual non-exclusive access easement to enter the Farm in order to access the Parcel Corners for the purpose of evaluating whether Dean has and continues to comply with its obligations under this Agreement, the Revegetation and Weed Control Plan, and any Water Court Approvals or Regulatory Approvals. The easement rights granted in this subsection include, the right to conduct site inspections; install and maintain piezometers, or lysimeters; perform soil evaporation and plant transpiration tests; and perform vegetative studies and surveys. Utilities, its successors, assigns, representatives, agents, and its invitees shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Farm for access to and from any established roads, highways, streets, or alleys, in order to perform Utilities rights under this Agreement. Utilities will provide Dean with reasonable notice prior to accessing or allowing its employees, contractors, representatives, or agents to access the Farm pursuant to this Section 4(A).

(B) The easements granted in subsection (A) entitle Utilities, its successors, assigns, representatives, agents, and its invitees to take all actions Utilities deems necessary to accomplish the dry-up and revegetation of the Parcel Corners including, without limitation, constructing drainage and conveyance ditches, monumenting dried-up acreage, revegetating with drought-resistant plants, removing alfalfa and other deep-rooted plants, trees, phreatophytes, and tamarisk, and removing and filling in all or portions of irrigation ditches and/or farm laterals. In the event that Dean fails to perform its obligations for dry-up and revegetation hereunder, as determined by Utilities in its reasonable discretion, Dean will reimburse Utilities for all expenses Utilities incurs, up to a maximum of \$200 per acre, to dry-up and revegetate the Parcel Corners, provided further, that this expense limitation does not include or apply to any costs Utilities may incur in relation to Dean's provision of water for revegetation purposes pursuant to subsection 2(E) above. Upon completion of all actions necessary for Utilities to accomplish the dry-up and revegetation of the Corner Parcels, Utilities shall provide Dean with an invoice for the expenses. Dean shall make payment on such invoice within 30 days of receipt.

(C) Utilities shall replace, repair, or reimburse Dean for the reasonable cost of replacement or repair of physical damage to Dean's improvements on the Parcel Corners, to the extent such damage is caused by Utilities' use of the Farm pursuant to this Agreement.

**Section 5. General Provisions.**

(A) This Agreement, with the burdens and benefits it imposes, is binding upon, touches and concerns, and will run with the Farm in perpetuity, and is forever enforceable against the Parties and their successors, heirs, and assigns.

(B) Dean warrants that it has good and marketable title to the Farm and has full right and lawful authority to make the covenants and grant the easements contained in this Agreement. Further, Dean warrants, promises, and agrees to defend Utilities in the exercise of Utilities' rights hereunder against any defect in Dean's title to the Farm or Dean's right to make the covenants and/or grant the easements in this Agreement. This Agreement may be enforced by Utilities or by any party having any right, title or interest in the water rights represented by the Corner Shares or by the State Engineer of the State of Colorado, at any time in any action at law or in equity, including, without limitation specific performance and injunctive relief.

(C) Dean is and will be entitled to use the Parcel Corners for any purpose not inconsistent with this Agreement including, but not limited to, the mining and removal of sand, gravel, and other materials; water storage and water delivery infrastructure, approved dry-land grazing; and recreational, residential, commercial, and industrial purposes.

(D) Notwithstanding anything else in this Agreement, Dean is prohibited from irrigating, using, developing, or conducting any activities on the Parcel Corners in any manner that reduces the consumptive use credit available to Utilities from the Corner Shares in the Water Court Change Case or any Water Court Approval.

(E) Dean shall reasonably cooperate with Utilities to demonstrate the dry-up and revegetation of the Parcel Corners, including but not limited to, providing affidavits or testimony at no cost to Utilities.

(F) Upon Utilities' transfer of the Corner Shares to any party, that party will succeed to Utilities' interest in this Agreement and will have the right to enforce the terms of the Agreement against Dean or Dean's successors in interest to the Farm.

(G) All recitals and attached exhibits to this Agreement are incorporated herein by this reference.

(H) Utilities will record this Agreement in the real property records of the Clerk and Recorder of Bent County, Colorado.

(I) All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by express courier, or by first class U.S. mail, postage prepaid. Notice delivered in

person or by courier shall be effective upon such delivery; notice provided through U.S. mail shall be effective three days after deposit in the U.S. mail. Notice shall be given to the receiving party at the following addresses or to such other address as such party may have given to the other by notice pursuant to this subsection:

FOR ALAN DEAN

Alan Dean  
31452 County Road 12  
Las Animas, CO 81054

FOR UTILITIES

Manager, Water Resources and Demand Management  
Colorado Springs Utilities  
P.O. Box 1103 Mail Code 1825  
Colorado Springs, CO 80947

With a Copy to:

City Attorney's Office  
Colorado Springs Utilities  
ATTN: Utilities Division  
P.O. Box 1575, MC 510  
Colorado Springs, CO 80901-1575

(J) The failure of the Parties to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of Parties in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by the Parties of any default hereunder shall in any manner be construed as constituting a waiver of such default.

(K) This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, unless the dispute concerns a water matter within the water court's jurisdiction. In such a case, venue will be in the Water Court for Water Division 2.

(L) Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the parties hereto and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

(M) The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

(N) This Agreement represents the entire agreement between the parties hereto regarding the matters contained herein and no additional or different oral representation, promise or agreement, oral or otherwise, shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing explicitly referring to this Agreement and signed by the parties.

(O) In the event Dean fails to perform any of its obligations under this Agreement, Utilities may avail itself of any legal and/or equitable remedies available, including without limitation, the remedy of specific performance.

(P) This Agreement may be modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by both Parties. As set forth in the recitals, the Parties intend, and will cooperate, to amend this Agreement upon issuance of new stock certificates to Utilities representing the Corner Shares, and upon the installation of the Center Pivot Sprinklers and survey of the Parcel Corners.

**IN WITNESS WHEREOF, ALAN DEAN HAS EXECUTED THIS DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** on the date set forth above.





**THE CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO  
MUNICIPAL CORPORATION, ON BEHALF OF  
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

---

Darlene Kennedy  
Real Estate Services Manager  
City of Colorado Springs

Date: \_\_\_\_\_

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EL PASO    )

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Darlene Kennedy, as Real Estate Services Manager of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

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Notary Public

My commission expires \_\_\_\_\_

APPROVED AS TO FORM:

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City Attorney's Office – Utilities Division

**Dry Up Covenant Draft Exhibit A**

Legal Description of Farm

Township 22 South, Range 52, West of the 6<sup>th</sup> P.M.

Section 22: S/2NW/4, N/2SW/4, SE/4SW/4, W/2SE/4, SW/4NE/4,  
EXCEPT a tract of land containing 20 ACRES, more or less, as described in Deed between Edward P. Dean, Grantor, and the State of Colorado, for the use and benefit of the Department of Natural Resources, acting by and through the Wildlife Commission and Division of Wildlife, Grantee, recorded April 28, 1983 in Book 370, Page 305, Bent County, Colorado Records.

Section 27: E/2

**Dry Up Covenant Draft Exhibit B**  
***Kansas v. Colorado Dry-Up Agreement***

**Operating Procedures For**  
**Administration Of Parcels Claimed For**  
**Augmentation Credit**

Plans Approved by the Colorado State  
Engineer Pursuant to the Amended Rules  
and Regulations Governing the Diversion  
and  
Use of Tributary Ground Water  
in the Arkansas River Basin,  
Colorado

September 2005



## **I. Selection and Approval of Parcels for Augmentation Credit**

### ***A. Colorado's Evaluation of Acreage***

The Colorado Division of Water Resources (CDWR) has conducted several studies of irrigated lands in the Lower Arkansas Basin over a period of several decades. During the Kansas v. Colorado court case George Moravec developed mapping of irrigated acreage and assignments to ditch service areas using 1985 aerial photos for the area between Pueblo and the Kansas-Colorado stateline. Similarly, Spronk Water Engineers evaluated 1980 aerial photos for the State of Kansas and developed mapping of irrigated lands in the same area. Experts also reviewed historic aerial photos and data to assess changes in acreage during the period just prior to the Arkansas River Compact through 1980.

In 1998 and again in 2002 and 2003, the CDWR conducted studies of irrigated lands in the same areas using satellite imagery to classify irrigated and non-irrigated lands. Additionally, the CDWR has developed an ongoing data collection system to determine the lands irrigated by wells as a sole source of supply or as a supplemental source to surface water by conducting farm verification interviews each winter with farm operators in the lower basin. The work done by Colorado to identify and map irrigated lands has been critiqued by Kansas and by Colorado water right owners and ditch companies and corrected as applicable.

The Colorado State Engineer believes that the result of these studies is a comprehensive set of mapping that should be relied upon for evaluating claims for augmentation credit derived from the removal of pre-compact water rights for replacement of stream depletions caused by post-compact well pumping.

***B. Nomination of Parcels for Dry-up Credits in Replacement Plans***

Beginning with the 2006-07 Replacement Plan year, plan proponents will need to select parcels for dry-up credit utilizing the mapping developed by the CDWR for any dry-up credit to be claimed under the provisions of Rule 6 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado (Amended Use Rules). The CDWR mapping will include areas shown as irrigated in either the 1985 aerial photos evaluated by Colorado or the 1980 aerial photos evaluated by Kansas. Parcels identified within this mapped area that have not had shares moved to different locations will be eligible for dry-up crediting under Rule 6 provisions.

Mapped parcels shall be provided in GIS format compatible with the ArcView software used by the CDWR unless provisions are made to coordinate mapping with the Division 2 Office in Pueblo. Mapping for nominated parcels must be provided with the March 1, 2006 Replacement Plan submittals in order to ensure timely approval of replacement sources for the 2006-07 Plan Year and by March 1st of each succeeding plan year.

### *Example of CDWR Mapping*



Plan proponents seeking to nominate any lands they believe were historically irrigated that do not lie within the mapped irrigated lands developed by the CDWR must seek a change of water right for the associated shares in Division 2 Water Court prior to approval in any plan approved pursuant to the Amended Use Rules.

#### *C. Minimum Standards for Parcel Selection*

Dry-up parcels must be at least five acres unless they comprise all of an existing DWR parcel that is already less than five acres. Parcels that represent a portion of an existing field can only be split with the

direction of historic irrigation unless a means of physical separation is approved by the Division Engineer. A physical separation must exist between any irrigated portion of a parcel and the dry-up portion unless prior approval by the Division Engineer's Office is received. Waiver of the physical separation criteria will only occur for areas adjacent to sprinkler or drip systems and not for flood and furrow irrigation. For dry-up fields left fallow or with a dryland cover crop without permanent root system (that is, not alfalfa or pasture grass for example), the separation can be a ditch or tilled strip at least ten feet in width that prevents irrigation application from reaching the dry-up parcel. For partial fields containing deep-rooted crops such as alfalfa or pasture grass a deep tilled separation of at least 25 feet must be maintained along with any ditches necessary to ensure no irrigation application to the dry-up portion. For any dry-up parcel that is planted with a dryland crop (haygrazer, milo, millet, etc.), the crop should either be drilled at an angle to normal irrigation direction or a tilled strip maintained at the top of the field that clearly separates the crop from any possible irrigation source (preferably both).

*Example of Physical Separation Between  
Irrigated Parcel and Dry-up Parcel*



*Example of Tilled Strip at Dry-up  
Parcel Header for Dryland Crop*



***D. Dry-up Parcels Irrigated by Sole Source Wells***

For any parcel from which surface water has been removed and claimed for augmentation credit, but which will be irrigated by a sole source well (e.g. drip systems or sprinkler systems or sole source flood), the following information must be provided with each March 1st Plan submittal:

1. Well ID Number(s) serving the parcel
2. Method of irrigation (Drip, Sprinkler, Flood, Etc.)
3. Description of how parcel will be separated from surface water irrigation and storm runoff from areas adjacent to the parcel
  - a) Removal of header ditch
  - b) Plug in header ditch or in feeder from surface water lateral
  - c) Other method (describe)

***E. Parcels Formerly Containing Alfalfa or Alfalfa-Grass Stands***

Beginning with the 2006-07 Replacement Plan Year parcels containing alfalfa or mixed alfalfa stands must be deep tilled or chemically killed by no later than April 1st of each Plan Year unless the CDWR field staff have inspected the parcel and the Division Engineer has agreed that the alfalfa stand will not produce any significant growth due to either precipitation or

sub-irrigation. Notwithstanding these provisions, for any parcel that exhibits sustained growth (i.e. plant growth to a height of more than 6 inches) during the dry-up year, the CDWR field staff shall require either immediate chemical kill or deep tillage or shall deem the parcel to be disqualified for augmentation credit.

***F. Parcels with Areas of High Ground Water or Seepage***

Fields containing areas of high ground water or areas effected by seepage from ditches or natural water courses, ponds or reservoirs may be disqualified or required to be chemically killed or deep tilled if significant crop growth continues to occur during the irrigation season absent irrigation supply.

***G. Plan Year and H-I Model Year Dry-up Claims***

Due to the conflict between Replacement Plan years (April 1st through March 31st) and H-I Modeling periods (January 1st through December 31st), replacement plan proponents shall indicate whether a dry-up claim is for the Plan Year of calendar year. For any dry-up parcel irrigated during the period January through March of any year, but nominated for dry-up credit after April 1st (e.g. winter wheat), the plan proponent must provide a consumptive use analysis consistent with the methodology used for H-I Model crediting prepared by a registered professional engineer to determine how to pro-rate the dry-up acreage

for the partial H-I Model year. This analysis must be submitted by no later than May 1st of the year in which the partial credit is being claimed. An estimate of the reduction in consumptive credit to be used in the Replacement Plan shall be provided with the March 1st plan submittal for purposes of plan evaluation and approval.

### ***H. Mapping by Division of Water Resources for Approved Parcels***

Using GIS data provided by the plan proponents, Division 2 staff will prepare dry-up shapefiles and mapping of the parcels approved in the replacement plan. This data and mapping will be used by CDWR field staff and Kansas to monitor dry-up fields. Division 2 staff will attempt to make this mapping available by April 15th of each year. Final mapping for dry-up affidavits will be produced at the conclusion of the credit period (January 15th for calendar year dry-up and April 15th for replacement year dry-up).

## **II. Parcel Identification**

### ***A. Parcel Identification***

Parcels shall normally be identified using the Parcel ID established by CDWR unless another parcel identification system is approved by the Division Engineer. Mapping of approved parcels and data collection by CDWR field staff while monitoring parcels will rely on the Parcel ID to relate parcel information. The typical Parcel ID is in the format

Township Number, Range Number, Section Number and a two-digit field number (e.g. 21573607).

## ***B. Physical Identification of Dry-up Parcels***

### **1. Permanent Dry-up Parcels**

For parcels that have been approved for dry-up for at least three consecutive years, or that are intended for permanent removal of all types of irrigation, a sign shall be placed in a prominent location near the most logical point of observation near a public road way or the commonly used access point to the parcel. The sign shall be securely mounted on a 4" x 4" or 6" by 6" timber post and shall be at least 9" wide by 12" high, made of durable material, and with minimum 1" lettering. Signs shall state "Dry-Up Parcel ID XXXXXXXX."

### **2. Temporary Dry-up Parcels**

For parcels that are nominated for only temporary dry-up (less than three consecutive years), a sign shall be placed in a prominent location near the most logical point of observation near a public road way or the commonly used access point to the parcel. The sign shall be securely mounted on a steel tee-post or 4" x 4" or 6" by 6" timber post and shall be at least 12" wide by 6" high, made of durable material, and with minimum 1" lettering.

Signs shall state:

**“Dry-Up Parcel ID XXXXXXXX”  
“No Irrigation”**

or

**“Dry-Up Parcel ID XXXXXXXX”  
“Irrigated by Well ID XXXXXXXX”**

### **3. Installation of Signs**

Signs shall be installed by no later than April 1st of each year and signs on permanent dry-up fields shall be inspected for damage and possible replacement by April 1st of each year. Mapping showing sign locations or GPS locations of signs shall be provided by no later than April 15th of each year.

## **III. Field Monitoring of Dry-up Parcels**

### ***A. Colorado Division of Water Resources’ Role***

Division of Water Resources field staff shall visit dry-up parcels on a periodic basis during each irrigation season to determine adequacy of dry-up provisions and sources of irrigation supply for parcels that have ongoing irrigation by sole source wells. Data will be collected for each parcel as shown on the attached field inspection form. Data collected will be maintained in the Division 2 Office and periodically provided to Kansas and interested parties upon request. Problems discovered during the periodic inspections



will be communicated to the designated person for each plan so that the problem can be resolved or credits forfeited for the specific parcel.

Shares attributable to any parcel deemed by the Division Engineer as not actually being in a dried up condition shall be immediately removed from computations of augmentation credits.

The CDWR personnel will also conduct joint field inspections as requested with personnel from Kansas and will coordinate on communication about problems with any dry-up parcels that will affect the H-I Model input data.

### ***B. Role of Plan Proponent and Well Owners***

Each replacement plan shall designate with the March 1st Plan Application a contact person or person(s) for communications related to dry-up parcels. The contact person shall be responsible for ensuring that all mapping, signage and owner information is provided as described above. The contact person will also be responsible for contacting any owners for parcels with restricted access to arrange periodic field inspections and will be available to participate on field inspections by CDWR field staff upon request. The contact person will be responsible for communicating with owners of tracts where problems with dry-up conditions have been encountered to correct dry-up deficiencies. The plan proponent contact will also be responsible for ensuring that all dry-up affidavits are submitted in a timely manner and with

complete documentation as may be required by plan approval conditions.

Owners of dry-up parcels will be responsible for notifying CDWR when any spill or irrigation occurs on a parcel that may disqualify the parcel or portions thereof from dry-up crediting. Timely notification will facilitate remediation activities that may preserve most dry-up credit for a parcel. When required by CDWR staff to take corrective actions on a parcel the owner or contact person will prepare a report to document actions taken and submit the report to the Division 2 Office within ten days of remediation activities.

### ***C. Resolution of Problems with Tracts***

When a problem is discovered on a tract the Division Engineer or designated representative will determine whether an acreage reduction or consumptive use reduction is necessary. For parcels where dry-up has been unobtainable for the majority of a season on a discreet portion of a parcel an acreage deduction will be made for the dry-up crediting to eliminate that portion.

For parcels that experience continued growth of permanent vegetation, such as alfalfa, despite efforts to chemically kill or deep till the parcel, partial dry-up credit will only be considered if a consumptive use analysis prepared as described in Paragraph I-G above is submitted with the dry-up affidavit.

#### ***D. Dry-up Affidavits***

At the conclusion of each dry-up period (either April through December or April through the following March), an affidavit shall be submitted signed by a person having knowledge of the dry-up activities and historic irrigation of the parcel. An example of the dry-up affidavit is attached. Affidavits will normally be due by January 15th for April through December dry-up or by April 15th for April through March dry-up.

Affidavits for each plan shall be submitted with a summary tabulation indicating for each parcel whether the claim is made for full credit, partial credit or whether the tract was irrigated by a sole source well. Summary tabulations shall total the claimed acreage by category under each ditch.



**Dry Up Covenant Draft Exhibit C**  
**Minimum Revegetation and Weed Control Plan Requirements**

- (1) A report by a qualified independent expert evaluating the species, character and density of existing vegetation on the site and summary of potential impacts to vegetation as a result of the Project, and
- (2) A revegetation plan, prepared by a qualified independent expert, that includes/provides for:
  - (a) A procedure for Utilities to extend the Revegetation Deadline at Utilities' sole discretion;
  - (b) A procedure for Utilities to make the determination that Alan Dean has successfully completed revegetation of the Corner Parcels in accordance with the Agreement and the Water Court or Regulatory Approvals;
  - (c) Removal of existing vegetation no more than thirty (30) days prior to commencement of initial site grading;
  - (d) Revegetation of areas that have been filled, covered or graded as soon as practicable;
  - (e) Use of site-specific native seed mix, with the exception of any landscaped areas and use of mulching to support vegetation growth;
  - (f) Topsoil from disturbed areas stripped and stockpiled on site for redistribution over the completed final grade; stockpiling that conforms to best management practices and ensures that soil organisms in stockpiled soil remain viable until completion of the redistribution process.
- (3) A weed control plan, prepared by a qualified independent expert, that addresses all State and County-listed noxious weeds found on site and includes:
  - (a) Inventory and map showing the locations of State and County listed noxious weeds; and
  - (b) Ongoing weed control at all locations disturbed by the Project and along access roads during construction and operational phases.
  - (c) A requirement that Alan Dean controls the Parcel corners, or dried up portions thereof, noxious weeds from "B" and "C" species lists of the Colorado Noxious Weed List, and eradicate from the Parcel Corners, or dried-up portions thereof, any noxious weeds from the "A" species list, as those lists may be amended or replaced from time to time.

- (4) A rehabilitation plan, prepared by an independent qualified expert, for all land areas from which historic irrigation will cease, including the following:
- (a) Description of all lands included;
  - (b) Description of plant and seed material to be used and the method, amounts and timing of their application;
  - (c) Source, amount, timing and seasonal duration of irrigation water to be applied to establish the intended Revegetation, and that such water is available until successful establishment of Revegetation is completed, or such other period as the Permit Authority shall require;
  - (d) Whether the plan is required as a part of any Water Court decree, or Division of Water Resources Rule 14 plan or Substitute Water Supply Plan, and if so whether the plan has been approved by the Water Court, or the Division of Water Resources (include a copy of the decree and plan as so approved);
  - (e) Description of the costs of preparing the soil, seeding and planting vegetation and irrigating the same, costs of removal of noxious weeds and maintaining weed control throughout the applicable Revegetation establishment period, and revising and repeating the Revegetation plan in the event the plan fails in whole or in part; and, as part of the security required by Chapter 5, proposed security to guarantee successful implementation and completion of such Revegetation shall include bonding, based on a minimum presumptive cost of \$750.00 per acre for Rehabilitation plans involving municipal use or more than 160 acres, which presumptive amount may be revised from time to time by the Permit Authority;
  - (f) Description of a continuing monitoring and maintenance plan for implementation following the certification of establishment on the revegetated lands; such description shall include the estimated costs to be incurred in monitoring by the County and the Applicant/Permit Holder as well as the expected costs in maintenance of the revegetation on these fields; and, to the extent a grazing plan is to be implemented, a description of the parameters for utilizing a grazing plan and the compliance procedures must be described;
  - (g) Description of the methods and costs to control and prevent animal species infestations, including without limitation, prairie dogs.

## EXHIBIT C

### Form Return Flow Easement

#### **NON-EXCLUSIVE PERMANENT RETURN FLOW EASEMENT AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Alan Dean ("Grantor") who owns certain parcels of real property located in Bent County, Colorado, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Premises"), hereby bargains, sells, grants and conveys to the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation on behalf of its enterprise, Colorado Springs Utilities ("Utilities"), its successors and assigns, a permanent non-exclusive easement (the "Easement") to enter, occupy, and use the portion of the Premises described in **Exhibit B** and graphically depicted by the shaded area in **Exhibit C** (the "Easement Area"), both such exhibits are attached hereto and incorporated herein by this reference, to construct, reconstruct, install, operate, use, maintain, repair, replace, upgrade and/or remove any augmentation stations, headgates, laterals, turnouts, divide boxes, conveyance structures, recharge ponds, monitoring equipment, measuring flumes and/or other facilities and related appurtenances that are necessary, in Utilities' reasonable discretion, to ensure that the water attributable to certain shares in the Fort Lyon Canal Company ("FLCC") owned by Utilities or that Utilities has an interest in that were historically used to irrigate a portion of the Premises can be delivered to the FLCC ditch and/or the Arkansas River and its tributaries, as for municipal use by the City of Colorado Springs and the replacement of historical return flows (the "Improvements"). Utilities and Grantor may be referred to herein collectively as the "Parties" and each individually as a "Party". Such Easement is granted by the Grantor and is accepted by Utilities pursuant to the terms and conditions contained in this Return Flow Easement Agreement (the "Agreement"):

1. Utilities, its agents, successors, and assigns, shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Premises for access to and from any roads, highways, streets, alleys, or any other point to the Easement Area, in order to perform Utilities' rights in the Easement Area.

2. Utilities shall have the right to survey, construct, install, reconstruct, operate, use, maintain, repair, patrol, replace, upgrade, and remove at any time and from time to time the Improvements, and one more additional Improvements, within the Easement Area and shall further have the right to use the Easement Area for the flow of water to and from the Improvements. Such right shall be perpetual, and Grantor shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Easement Area. In addition to delivering water attributable to those certain shares in FLCC owned by Utilities or that Utilities has an interest in, Utilities may use the Improvements to deliver any other ground or surface water that Utilities owns or acquires in the future to the FLCC ditch and/or Arkansas River and its tributaries, provided that Utilities does not unreasonably enlarge the burden of the Easement.

3. Except as provided in paragraph 4 below, Grantor shall retain the right to make full use of the Premises, except for such use as might endanger or unreasonably interfere with the rights

of Utilities in the Easement Area. Grantor shall only perform or permit other persons or entities to perform construction or other work within the Easement Area after receiving prior written approval by Utilities and only if such construction or other work is performed in accordance with the terms of this Agreement and all applicable laws, rules, and regulations, as they may be modified from time to time.

4. Grantor shall not modify, relocate, or remove any of the Improvements without the express prior consent of Utilities. Grantor shall not construct or place any permanent structure or building on any part of the Easement Area without Utilities' prior written consent, including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, playhouses, or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining walls, permanent or invasive landscaping design features, or any edifice projections such as balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Utilities may remove any such structure or building constructed or placed within the Easement Area without Utilities' prior written consent. If Grantor constructs, places, or permits any such structure or building within the Easement Area without Utilities' prior written consent, then Grantor shall reimburse Utilities for all expenses (including, but not limited to, removal, court, collection, and attorneys' fees and costs) associated with or arising from removing such structure or building. Moreover, in no event shall Grantor: (a) construct or place, longitudinally within the Easement Area any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities, or other utility facility or appurtenance without Utilities' prior written consent; or (b) materially change, by excavation or filling, the present grade or ground level of the Easement Area without the prior written consent of Utilities.

5. Grantor shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Easement Area by Grantor or other persons acquiring an interest in the Premises unless Utilities has consented to such uses. Additionally, Grantor shall not construct any new or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Easement Area which might, in Utilities' reasonable discretion, unreasonably endanger or interfere with any Improvements or Utilities' rights in the Easement including, but not limited to, Utilities' rights of maintenance and reasonable access, without Utilities' prior written consent.

6. Utilities shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's improvements on the Premises, whether or not within the Easement Area if and to the extent such damage is caused by Utilities' construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, removal, or other use of Utilities' Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements, Utilities shall promptly restore, replace, or repair the surface of the Easement Area to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Utilities shall not be liable for damage to, nor shall it be obligated to repair or replace any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Easement Area in violation of the terms of

this Agreement including, but not limited to, any tree(s) that interfere with the Improvements or Utilities' rights in the Easement.

7. Grantor shall be responsible for the surface maintenance of the Easement Area; however, Utilities shall have the perpetual right, but not the obligation, to cut, trim, mechanically or chemically control, and remove trees, brush, and other obstructions which unreasonably injure or interfere with Utilities' use, occupation or enjoyment of the Easement Area, or Utilities' right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove its Improvements, without liability for damages arising therefrom.

8. Grantor, its successors, heirs, and assigns, shall not take any action which would unreasonably impair the lateral or subjacent support for the Improvements.

9. The Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. Utilities' exercise of any rights pursuant to the Easement, other than those retained by Grantor shall be within the sole discretion of Utilities. Utilities shall use the Easement consistent with Utilities' uses described herein.

10. Grantor warrants that it has good and merchantable title to the Premises and has the full right and lawful authority to grant the Easement. Further, Grantor warrants, promises, and agrees to defend Utilities in the exercise of Utilities' rights hereunder against any defect in Grantor's title to the Property or Grantor's right to grant the Easement.

11. Grantor hereby releases Utilities and shall fully protect, defend, indemnify and hold harmless Utilities, the City of Colorado Springs, the Colorado Springs City Council, the Utilities Board of Directors, and their respective officers, employees, agents, and representatives from and against any and all claims, costs, and fees (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature (including, but not limited to environmental) arising from or in connection with the Easement, Grantor's improvements, or the Improvements to the extent arising from or due to Grantor's action(s) or failure(s) to act.

12. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, administrators, successors and assigns of the Grantor and Utilities.

13. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of Bent County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

14. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein

contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

15. Except as expressly provided otherwise, this Easement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action, or other right.

16. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

17. This Agreement shall be recorded in the real property records of Bent County, Colorado.

18. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19. Any notice provided in accordance with this Agreement, shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid, and return receipt requested to either Party's address as shown below or to the property owner of record ("Notice"). Such Notice shall be effective upon the date received and acknowledged by signature of the Party that receives Notice. Either Party may change its address to which any Notice is to be delivered under this Agreement by giving Notice as provided herein.

**To Utilities:**

Colorado Springs Utilities:  
Manager, Water Resources and Demand Management  
P.O. Box 1103, Mail Code 1825  
Colorado Springs, CO 80947

**With a copies to:**

City of Colorado Springs  
Attn. Real Estate Services  
30 S. Nevada Avenue, Suite 502  
Colorado Springs, CO 80903

City Attorney's Office  
Colorado Springs Utilities  
ATTN: Utilities Division  
P.O. Box 1575, MC 510  
Colorado Springs, CO 80901-1575







**[Form Return Flow Easement Exhibit A]**

**Legal Description of Real Property**

Township 22 South, Range 52, West of the 6<sup>th</sup> P.M.

Section 22: S/2NW/4, N/2SW/4, SE/4SW/4, W/2SE/4, SW/4NE/4,  
EXCEPT a tract of land containing 20 ACRES, more or less, as described in Deed between Edward P. Dean, Grantor, and the State of Colorado, for the use and benefit of the Department of Natural Resources, acting by and through the Wildlife Commission and Division of Wildlife, Grantee, recorded April 28, 1983 in Book 370, Page 305, Bent County, Colorado Records.

Section 27: E/2

**Form Return Flow Easement Exhibit B**

Easement Legal Description

**[Form Return Flow Easement Exhibit C]**

Depiction of the Easement Area

**EXHIBIT D**

Form Special Warranty Deed

**SPECIAL WARRANTY DEED  
(WATER RIGHTS)**

**THIS DEED**, made this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2024, between Alan Dean (“Grantor”) and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, CO 80947-1015 (“Grantee”).

**WITNESSETH**, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, and conveys, to Grantee the following described water rights, as real property and personal property, specifically described as follows:

(a) One hundred and eleven (111) of the four hundred and fifty (450) shares of capital stock of The Fort Lyon Canal Company, a Colorado nonprofit corporation, (the “Company”), which shares are evidenced by Stock Certificate Number 9803, (the “Shares”); and

(b) All of Grantor's beneficial right, title and interest in and to all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, augmentation facilities, headgates and all other assets, rights, title or interests represented by said Shares, and in addition to and in no way limited by the foregoing, any and all other right, title or interest in the Company represented by said Shares, (together, with the Shares, the “Water Rights”).

**TOGETHER** with all and singular, the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title interest, claim, and demand whatsoever of the Grantor, either in law or equity, of, in and to the above-bargained Water Rights, with the hereditaments and appurtenances.

**TO HAVE AND TO HOLD** the said Water Rights above-bargained and described with the appurtenances, unto the Grantee, the Grantee’s successors and assigns forever. And the Grantor **WARRANTS** the title to the above-bargained Water Rights against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

**Remainder of this page intentionally left blank.**



ACCEPTED BY THE BUYER, CITY OF COLORADO SPRINGS, COLORADO  
A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION  
ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES

By: Travas Deal  
Travas Deal (May 24, 2024 09:23 MDT) this this 24<sup>th</sup> day of May, 2024  
Travas Deal  
Chief Executive Officer

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office—Utilities Division

**Exhibit E**

Form of Corner Share Assignments

**STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE**

(The Fort Lyon Canal Company)

THIS STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE (“Assignment”) is made this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2024, by Alan Dean (“Seller”), to the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, Colorado, 80947-1015 (“Buyer”). FOR VALUE RECEIVED, Seller hereby sells, assigns and transfers one hundred and eleven (111) of the four hundred and fifty (450) shares of the capital stock of The Fort Lyon Canal Company, a Colorado nonprofit corporation, to Buyer, which stock is outstanding in the name of Seller on the books of The Fort Lyon Canal Company, and represented by Certificate No. 9803 (a copy of which is attached), together with all of Seller’s beneficial rights, title, and interest to the property of The Fort Lyon Canal Company represented by said shares, whether inchoate, choate, real or personal. Said one hundred and eleven (111) shares have historically been used to irrigate the “parcel corners” of the property described in Exhibit A, which will be irrigated by center pivot irrigation systems installed on said property. Seller does hereby irrevocably constitute and appoint the Secretary of The Fort Lyon Canal Company as its attorney-in-fact to transfer said stock on the books of The Fort Lyon Canal Company to the Buyer with full power of substitution in the premises.

\_\_\_\_\_  
Alan Dean

STATE OF COLORADO    )  
  )ss.  
COUNTY \_\_\_\_\_)

The foregoing **STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE** was acknowledged before me this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2024 by Alan Dean.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary

ACCEPTED BY THE BUYER, CITY OF COLORADO SPRINGS, COLORADO

A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION  
ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES

By: Travas Deal  
Travas Deal (May 24, 2024 09:23 MDT) this this 24<sup>th</sup> day of May, 2024  
Travas Deal  
Chief Executive Officer

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office—Utilities Division

**Lisa Barbato**

E-signed 2024-05-20 10:47AM MDT  
lbarbato@csu.org  
COLORADO SPRINGS UTILITIES

A square box containing a handwritten signature in grey ink, with a small 'x' to the left of the signature.

**Abigail Ortega**

E-signed 2024-05-20 09:02AM MDT  
ajortega@csu.org

A square box containing a handwritten signature in grey ink, with a small 'x' to the left of the signature.

# PSA - Alan Dean - Final

Final Audit Report

2024-05-24

Created:	2024-05-20
By:	Jessica Ramirez (jmramirez@csu.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsIMDKQe0_A5SSU2FSmOVIN9ScLuYtqqt

## "PSA - Alan Dean - Final" History

 Document created by Jessica Ramirez (jmramirez@csu.org)  
2024-05-20 - 2:19:56 PM GMT

 Document emailed to ajortega@csu.org for approval  
2024-05-20 - 2:24:06 PM GMT

 Email viewed by ajortega@csu.org  
2024-05-20 - 3:00:35 PM GMT

 Signer ajortega@csu.org entered name at signing as Abigail Ortega  
2024-05-20 - 3:02:35 PM GMT

 Document approved by Abigail Ortega (ajortega@csu.org)  
Approval Date: 2024-05-20 - 3:02:37 PM GMT - Time Source: server

 Document emailed to Lisa Barbato (lbarbato@csu.org) for approval  
2024-05-20 - 3:02:39 PM GMT

 Email viewed by Lisa Barbato (lbarbato@csu.org)  
2024-05-20 - 4:46:43 PM GMT

 Document approved by Lisa Barbato (lbarbato@csu.org)  
Approval Date: 2024-05-20 - 4:47:49 PM GMT - Time Source: server

 Document emailed to tdeal@csu.org for signature  
2024-05-20 - 4:47:51 PM GMT

 Email viewed by tdeal@csu.org  
2024-05-20 - 5:52:16 PM GMT

 Signer tdeal@csu.org entered name at signing as Travas Deal  
2024-05-24 - 3:23:23 PM GMT



Document e-signed by Travas Deal (tdeal@csu.org)

Signature Date: 2024-05-24 - 3:23:25 PM GMT - Time Source: server



Agreement completed.

2024-05-24 - 3:23:25 PM GMT

RESOLUTION NO. \_\_\_\_ - 24

A RESOLUTION IN SUPPORT OF THE ARKANSAS RIVER  
WATER PRESERVATION PRINCIPLES AND IN SUPPORT  
OF REGIONAL EFFORTS TO ENSURE THAT ARKANSAS  
RIVER BASIN WATER IS NOT PERMANENTLY  
TRANSFERRED OUT OF THE BASIN

WHEREAS, in 2003, the Pueblo City Council, the Colorado Springs City Council, the Board of Water Works of Pueblo, Colorado, the Board of Directors of the Lower Arkansas Valley Water Conservancy District, the Board of Directors of the Upper Arkansas Water Conservancy District, and the Board of Directors of the Southeastern Colorado Water Conservancy District collectively adopted the Arkansas River Water Preservation Principles (“Preservation Principles”) to, inter alia, “safeguard and preserve for present and future generations the water available for diversion and use within the Arkansas River Basin” and “to impose appropriate conditions and limitations on the transfer of water and water rights from the Arkansas River Basin”; and

WHEREAS, the City of Colorado Springs, acting through its enterprise Colorado Springs Utilities (“Utilities”), and the County of Bent, Colorado (“Bent County”) entered into an Intergovernmental Agreement in October, 2022 (“2022 Bent County IGA”), whereby they agreed, inter alia, to abide by the Preservation Principles and acknowledged that the harm from water projects that increase the diversion of water from the Arkansas River Basin to another river basin outweigh any benefits to the parties and agreed that each party shall endeavor to oppose any such project to the maximum extent possible; and

WHEREAS, the Southeastern Colorado Water Conservancy District (“SECWCD”) was created for the purpose of developing and administering the Fryingpan-Arkansas Project (“Project”), which is a transmountain diversion which supplies southeastern Colorado with improved supplemental water supply for irrigation, municipal and industrial uses, hydroelectric power generation, and recreational opportunities; and

WHEREAS, El Paso County/Colorado Springs residents make up approximately seventy percent (70%) of the SECWCD’s constituents (636,963 out of 907,622) and Colorado Springs Utilities (“Utilities”) uses the Project to obtain and deliver water to its customers; and

WHEREAS, SECWCD and the City of Aurora, acting by and through its Utility Enterprise (“Aurora”) entered into an Intergovernmental Agreement in October 2003 (“2003 SECWCD IGA”) whereby Aurora agreed, inter alia, that “Aurora shall not initiate or seek to implement any further permanent transfer of water rights not presently owned or under contract by Aurora” and that Aurora would develop new water supplies within the Arkansas River Basin exclusively from “interruptible supply agreements or water bank transactions” during the term of the 2003 SECWCD IGA; and

WHEREAS, Aurora recently purchased Arkansas River Basin water rights, including over 4,000 shares of stock in the Catlin Canal Company and other water rights, together with 5,475 acres of land in Otero County, Colorado, in the Arkansas River Basin (“Aurora Transaction”); and

WHEREAS, Aurora intends to export the water it acquired under the Aurora Transaction to its service area outside of the Arkansas River Basin; and

WHEREAS, the SECWCD Board of Directors adopted Resolution No. 2024 – 03D on April 9, 2024, urging Aurora to refrain from violations of the 2003 SECWCD IGA in the interests of regional cooperation and building relationships between water rights owners and municipal entities in the Arkansas River Basin; and

WHEREAS, the parties to the Preservation Principles have made an ongoing commitment to sustainable agriculture in the Arkansas River Valley; and

WHEREAS, City Council has determined that it is the best interests of the citizens of the City and the Utilities’ customers for City Council to: (1) reaffirm its commitment to the Preservation Principles; (2) affirm its belief that the Aurora Transaction is contrary to the Preservation Principles and that Utilities is obligated to oppose the Aurora Transaction under the Bent County IGA; and (3) affirm its commitment to support SECWCD and encourage Aurora to honor its commitments under the 2003 SECWCD IGA.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. City Council reaffirms its commitment to the Preservation Principles and to developing the City’s future water supplies with consideration to sustainable agriculture in the Lower Arkansas Valley.

Section 2. City Council affirms its understanding that a central purpose of the Preservation Principles and the 2022 Bent County IGA, is to prevent out-of-basin entities such as Aurora from purchasing any additional agricultural water rights and permanently transferring those water rights out of the Arkansas River Basin for municipal use.

Section 3. City Council believes that Aurora’s purchase of additional Arkansas River Basin water rights for transfer out of the Arkansas River Basin is contrary to the

Preservation Principles and that Utilities is obligated to oppose the Aurora Transaction under the Bent County IGA.

Section 4. City Council affirms its support of SECWCD and regional efforts to uphold the Preservation Principles.

Section 5. City Council urges Aurora to honor its commitments under the 2003 SECWCD IGA to (a) abstain from initiating or seeking to implement any further permanent transfers of water rights not owned or under contract by Aurora at the time of the 2003 SECWCD IGA and (b) only developing new water supplies from the Arkansas River Basin exclusively from “interruptible supply agreements or water bank transactions”.

Dated at Colorado Springs, Colorado, this \_\_\_\_\_ day of June, 2024.

\_\_\_\_\_  
Council President

ATTEST:

Sarah B. Johnson, City Clerk