

DRAFT-TRS-FOR REVIEW BY UYWCD NEGOTIATING COMMITTEE

Mr. Jon Snyder
Public Works Director
City of Steamboat Springs

Re: Proposal for contract for Municipal/Industrial water allotment from Stagecoach Reservoir

At its meeting on March 11, 2020, the Board of Directors of the Upper Yampa Water Conservancy District (the "District") discussed the general terms under which the District would be willing to offer a new additional allotment contract for storage of approximately 650 Acre Feet of water in Stagecoach Reservoir to the City of Steamboat Springs (the "City"), taking into account the City's need for such additional storage water as explained to the District's negotiating committee at our meeting in the City Offices on Monday, March 2, 2020.

The District proposes the following:

The allotment contract would be for approximately 650 Acre Feet of Stagecoach storage water annually.

The contract would commence on July 15, 2020, and terminate on July 15, 2041. The contract would contain a Right of First Offer provision. It would not be a perpetual contract. The proposed Right of First Offer provision is set forth at the end of this letter.

The purchase price for the first year of the term would be \$124.43 per acre foot, adjusted annually in 2021 and each year thereafter by the annual increases in the Denver/Aurora/Lakewood CPI.

The new storage water allocated to the City would be stored in the municipal/industrial pool, which is the first and senior priority of the Stagecoach pools.

The new storage water allocated to the City from Stagecoach would be used pursuant to a decreed water augmentation plan, decreed exchange or substitute supply plan approved by the Division Engineer for the benefit of public works facilities of the City and City-owned water rights, or such water may be beneficially diverted and used in public works facilities of the City, or such water may be beneficially used to augment the City RICD water right, or such water may be beneficially bypassed at the Yampa River outlet of the City's municipal wastewater treatment facility to the extent permitted by the Division Engineer as a municipal use of such water to reduce streamflow temperature at that location. The storage water could not be released and used by the City for uses which have not been decreed absolute to the District, so as not to trigger directives by the Division or State Engineers against the District in subsequent water years to "paper fill" or subsequently restrict the fill rights of Stagecoach Reservoir. Specifically, the City may not direct or control or contract to direct or control the allotted water for any use downstream of the confluence of the Elk River for "environmental, recreational uses including instream flow uses ("ER Uses")" without the prior written consent of the District, whose consent

may be granted, denied, or conditioned in its sole discretion, since the District water rights for storage of Stagecoach Reservoir water do not include absolute decreed uses for IER purposes.

The City would be entitled to a single use of the water contracted if used for augmentation or substitute supply, without right to reuse or successively re-use the water, but if storage water is diverted and used in the City public works facilities and return flows are captured and controlled before return to the River, such recaptured return flows could be reused and successively used by the City to extinction.

The contracted water may be used only during the then current water year, and no unreleased contracted water would be booked over to a succeeding year. There would be no carry-over storage. No water allotment contract out of Stagecoach Reservoir has a right of carry-over storage.

No sale, subletting, assignment or other disposition of the City's rights under the new contract or of the contracted water would be permitted without the written consent of the District, which may be granted or withheld or conditioned in the District's sole discretion.

If the City is interested in moving forward on this proposal, our attorney can prepare and send to you a draft of a proposed new water allotment contract for the approximate 650 AF of water. Such a contract would be generally consistent with the District's Stagecoach contract template for new storage water requests, such as used in its current recent contract with Steamboat Ski & Resort Corporation and the pending contract with Peabody Coal.

The District negotiating committee would be interested in receiving the City's thoughts and concerns with respect to these proposed terms. If the City believes that further discussions between the negotiating committee and City representatives would be desirable, then as soon as the "shelter in place" orders under the covid-19 restrictions are loosened sufficiently to do so, or in a virtual on line meeting, the District negotiating committee would be happy to meet with you and other City representatives in Steamboat Springs at a location and in a manner convenient for both parties. We should note that the above initial price and CPI adjustment and 2041 contract term were all specifically included in a motion adopted by the Board of Directors on March 11 by a 5-3-1 vote. The negotiating committee has no authority to change such terms without a subsequent motion by the Board.

The draft of the Right of First Offer provision to be contained in new contracts for Stagecoach Water is as follows:

“4.2 Right of First Offer. If Contractor and Upper Yampa do not enter into a new allotment contract for the Contracted Water before the end of the Term, then the relationship between Contractor and the District for a period of five years after the end of the Term shall include the following terms and provisions: Contractor shall have a right of first offer for the Contracted Water for a period of five years after the end of the Term. If within the period of five years after the end of the Term of this Contract, Upper Yampa determines to offer for contract all or a portion of the Contracted Water from the applicable Contract

Pool to any person or entity besides Contractor, Upper Yampa shall first notify Contractor of such decision and shall specify to Contractor the quantity, price (which may provide for annual adjustments), duration (but not to exceed 30 years), and terms and conditions upon which Upper Yampa offers to enter into a new water allotment contract (the "New Contract Offer"). For a period of 120 days after the giving of such notice, Upper Yampa will negotiate in good faith with Contractor regarding any and all of the provisions in such New Contract Offer, so long as Contractor first confirms in writing to Upper Yampa within 15 days of receipt of such notice that Contractor is willing to meet the quantity limitations and price and payment terms of the New Contract Offer. If the Parties have not entered into a new contract upon agreed terms and conditions within 120 days after the giving of such notice from Upper Yampa, then the New Contract Offer shall be deemed rejected. The terms and conditions of this Section 4.2 survive expiration of the Term to the extent set forth herein. If Upper Yampa enters into an allotment contract with any person or entity other than the Contractor for water from the applicable Contract Pool which does not include the Contracted Water, such action does not require compliance with this Section 4.2."

Very truly yours,

Ken Brenner
Board Chairman

Kevin McBride
UYWCD General Manager



May 15, 2020

Mr. Ken Brenner, Board President
Upper Yampa Water Conservancy District
3310 Clear Water Trail
Steamboat Springs, CO 80487
Via e-mail: kpbrennersteamboat@gmail.com

Re: City of Steamboat Springs – Upper Yampa Water Conservancy District Stagecoach Reservoir & Municipal Rates

Dear Ken:

The Upper Yampa Water Conservancy District (the District) sent a letter to the City of Steamboat Springs (the City) on December 12, 2017 proposing that “the re-pricing procedure under the extended term [of the City’s Stagecoach Reservoir contract] not be immediately implemented” until it was better understood how the Morrison Creek Project would progress. It is the City’s understanding that the District is not actively pursuing a Morrison Creek Reservoir project, since Tri-State Generation & Power Authority did not renew its contract for 7,000 acre-feet (AF) of Stagecoach water.

While the District has extended the City’s current \$35 per AF price through 2021, the City requires more timely assurances that the District will apply a fair and equitable rate to the City’s proposal for 1,200 additional AF of Stagecoach Reservoir water.¹ Therefore, the City respectfully asks the District to view the following policy implications associated with Stagecoach Reservoir through the lens of its recently adopted Strategic Plan.

Wildfire Threats to City Water Supplies

The City’s primary treated water supply comes from the Fish Creek Basin. While the Fish Creek watershed provides a firm yield greater than total municipal demand and it offers exceptional water quality, the risk that a catastrophic wildfire will impact that supply is high. To mitigate this concern, the City and the Mount Werner Water & Sanitation District completed and adopted the Fish Creek Critical Community Wildfire Watershed

¹ See letter from the City to the District dated November 13th, 2018 where the City petitions for an expansion of its existing Stagecoach contract for 552 AF to up to 1,200 AF.

Protection Plan in 2019 to evaluate the risk of wildfire to its drinking water supplies and to prescribe actions to mitigate that risk.² The plan highlighted the City's need for an expanded redundant treated water supply.

Water Security and Redundant Supplies

The City's Yampa River Infiltration Galleries produce approximately 0.8 million gallons per day (MGD) and preliminary design has been initiated for an expansion that would produce 1.8 MGD of redundant supply by 2022. This expanded capacity will allow the City to continue providing drinking water and sanitation to its customers in the event of a catastrophic interruption to the Fish Creek Filtration Plant. The infiltration galleries are augmented by the City's 552 AF contract for Stagecoach Reservoir, which was signed in 1988.

The City needs additional water to augment the expansion and to maintain our ability to provide safe, reliable, and affordable drinking water to our customers, even during disasters. By setting informed, transparent, and fair rates for municipal water from Stagecoach Reservoir, the District will be supporting the water security and public health of Steamboat Springs.

The Citizen's Need for Affordable Water

The effects of the current COVID-19 global pandemic have highlighted the importance of *affordable* drinking and sanitation services. Distributing the cost of securing source water, maintaining an aging distribution system, and complying with ever-increasing federal and state drinking water regulations across a small customer pool has led to cost-prohibitive water bills for some of the City's more vulnerable customers. The critical demand for equitable access to drinking and sanitation is rapidly growing as the COVID-19 global pandemic brought the Steamboat Springs economy to an abrupt halt when Routt County issued a Public Health Order requiring most of its citizens to remain at home.

The City anticipates sharp declines in utility revenues over the coming months and years as unemployment spikes. People need water to drink, cook, clean, flush toilets, and to wash hands during this crisis, so the City has made a temporary policy decision to postpone water service shut-offs for delinquent payees. Never has the need for affordable source water been so apparent.

² See [Fish Creek Critical Community Wildfire Watershed Protection Plan](#).

The District should provide Fair, Equitable, and Transparent Rates

The District was organized in 1966 by the District Court's Decree in Civil Action No. 3815. The Decree explicitly states that one of the purposes of the District's improvements is "to plan for and assist with the development of water resources of the District for municipal, domestic, industrial, recreational, and other beneficial uses."³

In 1988, the City petitioned the District for a water allotment contract pursuant to Section 123 of the Water Conservancy Act (the Act). Under the Act, the District "has the power to levy and collect taxes and special assessments for maintaining and operating such works and paying the obligations and indebtedness of the district." (C.R.S. 37-45-121 (2020)). In 2018, the District collected approximately \$1.4 million from properties within the municipal boundaries of the City of Steamboat Springs *in addition to* revenues collected by the District through water storage contracts and power sales, including the City's current contract. The Act is clear that the District must consider other sources of revenue and determine what taxation amount is *necessary* to pay the District's costs:

As to any district formed subsequent to April 22, 1957, to levy and collect taxes under class A, in each year, the board shall **determine the amount of money necessary** to be raised by taxation, **taking into consideration other sources of revenue** of the district, and shall fix a rate of levy which, when levied on every dollar of valuation for assessment of property within the district and with other revenues, will raise the amount required by the district to supply funds for paying expenses of organization, for surveys and plans, and for paying the costs of construction of and operating and maintaining the works of the district (C.R.S. 37-45-122(2)(a) (2020) (emphasis added)).

Under Section 123(1)(a) of the Act, under which the City petitioned for its current contract, the District "shall fix and determine the rate and the terms upon which such water or capacity of such works shall be sold, leased, contracted for, or otherwise disposed of for use by such municipalities; except that **such rates shall be equitable** although not necessarily equal or uniform for like classes of services throughout the district." (emphasis added).

Serving the agricultural, industrial, and municipal water needs of the Upper Yampa River Basin has been the District's stated purpose since its inception. Property owners within the District pay taxes to the District to fulfill this purpose. While the District has contracted some agricultural water from Stagecoach Reservoir, it serves only limited

³ See Civil Action No. 3815, March 8th, 1966 at paragraph 12. *Petition for the Organization of the Upper Yampa Water Conservancy District*. District Court for the County of Routt and State of Colorado.

industrial uses with the cancellation of the Tri-State contract, and its ability to serve municipal demands is in jeopardy if the District cannot provide a defensible rate and term. The City suggests that such a rate should consider the significant contribution made by City property owners via the mill levy and actual costs for providing raw water.

The City met with Directors Sharp and Brenner and General Manager, Kevin McBride, on March 2nd, 2020 to discuss the City's Stagecoach contract. At this meeting, the District committed to provide to the City 1) its proposed rate-setting methodology for new contracts, 2) the "denominator" it plans to use to set rates in consideration of contracted v. uncontracted water, 3) its Capital Improvement Plan and its Replacement and Maintenance Plan and 4) an account of how the District intends to apply the property tax revenues collected from its constituents towards capital maintenance and replacement reserves at Stagecoach Reservoir.

It was the City's understanding that it would have the opportunity to review this information prior to negotiating a rate per AF with the District. The City learned only by reading the Board's meeting minutes from March 11th that the Board opted not to provide this information nor to negotiate with the City prior to proposing a price of \$124.42/AF with a 20-year term. Furthermore, it wasn't until eight weeks later and only after the City submitted a Colorado Open Records Act (CORA) request that Mr. McBride notified the City's Public Works Director, Jon Snyder, of the Board's decision stating that "Regarding the City's interest in purchasing new Stagecoach water, the Board has established a price of \$124.42AF for new Stagecoach contracts." Mr. McBride provided some of the documents requested, but the financial rationale behind the \$124.42/AF was not provided.

It is also the City's understanding that the municipal rates for Yamcolo are calculated by adding a CPI adjustment to the 1979 price of \$26 per AF, which is approximately \$80 per AF today, the price paid by the Mount Werner Water & Sanitation District. A CPI adjustment to the City's \$35 per AF price is approximately \$70 per AF.

Mr. McBride provided the *Stagecoach Pricing 2018 actuals* document that stated a price of \$47.92/AF for Operating Expenses, plus \$20.81/AF for Capital Expenses and Reserves for a total of \$68.73/AF. Although the City questions why the District would charge its customers for a Capital Maintenance and Emergency Replacement Reserve account that has been fully funded with tax revenues at the 10% rate recommended by Anton Collins Miller LLP⁴, the District's own analysis indicates that \$68.73/AF is a more justifiable rate.

⁴ See Upper Yampa Water Conservancy District Memo from November 11th, 2019 regarding replacement and maintenance costs and emergency reserves.

The City also questions whether Stagecoach Reservoir will remain a reliable water source for the City's municipal needs under a proposed 20-year term. Municipal uses by nature are not as nimble as other uses and a 20-year term does not meet the needs of a city that is obligated to provide drinking and sanitation water perpetually. The Colorado River District⁵, for example, sets a 40-year term with an up to 35-year renewal for its Yampa water contracts and perpetual contracts are not uncommon in the basin.

Considering the points outlined herein, the City respectfully asks the District to reconsider its offer of \$124.42/AF under a 20-year term for new Stagecoach water, without providing a basis for that price and without consideration that City property owners pay over sixty-percent of the District's mill levy. The District can play a role in enhancing water security for the Steamboat Springs community by committing to fair, equitable, and enduring terms in an expanded Stagecoach Reservoir contract.

A two-way exchange of information, per the District's Strategic Plan, is warranted, and therefore the City looks forward to meeting with the full Board at its next in-person meeting. In the meantime, City Council will meet in Executive Session on May 19th to discuss this matter.

Sincerely,



Gary Suiter
City Manager
City of Steamboat Springs
PO Box 775088
Steamboat Springs, CO 80477
gsuiter@steamboatsprings.net

⁵ See Water Marketing Policy of the Colorado River Water Conservation District's Colorado River Water Projects Enterprise for the Yampa River Basin dated January 15, 2019.
<https://www.coloradoriverdistrict.org/wp-content/uploads/2019/07/crwcd-2019-elkhead.pdf>

TO: Board of Directors, Upper Yampa Water Conservancy District

FROM: Carolyn McCormick

DATE: 20 May 2020

SUBJECT General Manager Search Process Update

This is a summary of the work completed to date on the search for a new General Manager for the Upper Yampa Water Conservancy District.

Project Status

The project remains on track in terms of budget and timetable. We have completed these steps to date:

- Organized project and Search Committee
- Gathered data from 14 external stakeholders, 6 staff members, and the District's General Counsel inform the Leadership Profile
- Completed the Job Description and Leadership Profile to market the position and its unique opportunities
- Developed national, local, and regional advertising plan; posted job on 16 approved websites for total cost of \$2,100
- Developed list of 44 stakeholders to contact to obtain recommendations of potential candidates
- Developed list of 22 potential candidates and reached out to them to encourage their applications
- Prepared resume matrix to summarize relevant details from all applicants; review of application details continues
- Approved project timetable and application due date
- Reviewed applications of top candidates; this process continues
- Completed initial vetting interviews of top candidates to date; this process continues

Project Results

- 30 applications received to date from around the country
- Conducted 4 initial vetting interviews; 2 others scheduled; 2 further candidates on hold pending further consideration
- 2 applicants from the outreach efforts have applied; 3 others have indicated that they will apply
- Applicant pool is showing strong quality with highly enthusiastic applications continuing to be submitted
- Search Committee hopes to have 5-7 semi-finalist candidates with whom to meet in mid-June

Page 2

Criteria for Candidate Evaluation

Search Committee members and Search Consultant have used these parameters in reviewing the applications of candidates:

1. Leadership
 - Candidate has held significant leadership roles, understands how to manage complex operations, and has detailed knowledge of the water resources and Colorado
 - Candidate has helped an organization build its capabilities
 - Candidate has supervised staff and shows some experience in helping staff develop their capabilities
2. External Relations
 - Candidate has an understanding of how to lead a public service organization
 - Candidate has had experience in partnering with external, community groups
 - Candidate has some experience in working with government officials and representatives
 - Candidate has experience in working with a governing board
3. Other Factors
 - Candidate's compensation requirements fit the posted range
 - Candidate can begin work within roughly one month of receiving an employment offer

Next Steps

The Search Committee's immediate next steps for the next six weeks include the following:

- Continue candidate outreach efforts to ensure strong applicant pool
- Confirm additional vetting steps needed to identify semi-finalists
- Continue initial vetting of highly qualified candidates
- Close application process June 10th unless need to extend
- Conduct interviews of semi-finalists (5-7 candidates) June 24, 25

The subsequent steps in the search process include:

- Identify and announce 2-4 finalists
- Complete background and reference checks
- Conduct meetings with finalists and the staff, the board, and potentially others; targeting July board meeting for full board to meet final candidates
- Make hiring decision and extend offer
- Negotiate and finalize terms of the offer
- Plan the effective transition for the new General Manager

From: [Bob Weiss](#)
To: [Deb Bastian](#)
Cc: [Andy Rossi](#); [Kevin McBride](#)
Subject: FW: Observations of Tom Sharp regarding May 15 letter from City Manager to Ken Brenner of UYWCD
Date: Thursday, May 21, 2020 11:55:32 AM
Attachments: [March-April #2 KMc edits 3 27.pdf](#)

This one.

From: tom@tomsharp.com [mailto:tom@tomsharp.com]
Sent: Wednesday, May 20, 2020 12:28 PM
To: jlacy@steamboatlawyersgroup.com; gsuiter@steamboatsprings.net; jsnyder@steamboatsprings.net; 'Michelle Carr' <mcarr@steamboatsprings.net>; 'Kelly Romero-Heaney' <kromeroheaney@steamboatsprings.net>; 'Dan Foote' <dfoote@steamboatsprings.net>; jennifer Bock <jbock@steamboatsprings.net>
Cc: Kevin McBride <kmcbride@upperyampawater.com>; 'Andy Rossi' <arossi@upperyampawater.com>; Bob Weiss <bweiss@wvsc.com>; 'Ken Brenner' <kpbrennersteamboat@gmail.com>
Subject: Observations of Tom Sharp regarding May 15 letter from City Manager to Ken Brenner of UYWCD

All:

The City Manager sent a letter to Ken Brenner, president of the Upper Yampa Water Conservancy District, dated May 15, regarding proposed new contract for 650 AF of water out of Stagecoach Reservoir and pricing and term of such proposal, and pricing of existing 552 AF contract the City has with the District. I have read and reviewed that letter.

I have been a director of the Upper Yampa District continually since 1977, and have been on the Executive Committee of the District continually since the early 1980's.

I have drafted my comments and concerns regarding certain inaccuracies in the City Manager's letter. I have emailed those comments and concerns today to the other directors of the District and to the staff of the District and the District's general counsel. I am setting forth below in this email, verbatim, the email I have sent to such directors and staff. It is not confidential. The content of this below email is mine alone, does not represent the thoughts of any other director of the District or of any staff of the district. I have alerted Ken Brenner, Kevin McBride, and Bob Weiss that I am sending this email SOLELY as my thoughts only, and none of the 3 have objected to my doing so. The below email and its contents does not represent the views or conclusions of the Upper Yampa District or its directors or staff or the collective negotiating committee, but only my personal views and thoughts. I do not represent that either Ken Brenner or Kevin McBride approve or agree with the content below. Since tomorrow's District board meeting will be virtual, on computers or iPads, with perhaps more than 20 people online, with a long agenda, I have chosen to make my positions and thoughts in response to Mr. Suiter's letter by this email instead of taking 30 minutes of time on the virtual meeting explaining orally what those positions and thoughts are.

Nevertheless, so there is full disclosure, I will be making a motion under Board Agenda 5(c) tomorrow for board approval to send to the City the offer letter, draft of which is attached to this email and enclosed as of noon today in the District's public packet for tomorrow's meeting.

Here is the verbatim of my email sent today:

5-20-2020 (REVISED)

Board Members, Upper Yampa Water Conservancy District
Kevin McBride, General Manager
Bob Weiss, General Counsel

All:

This is a revision to Paragraph 3 below of my email sent out yesterday, May 19.

Bob Weiss forwarded to me and other board members of the UYWCD the letter of May 15 from the City Manager to Ken Brenner. I have read the letter.

There are inaccuracies in the City Manager's letter. I point them out as follows:

1. In paragraph 8(D) of the City's augmentation water decree in Water Case No. 09CW62, which was the augmentation decree for the 0.8 MGD infiltration gallery currently owned by the City, the 552 AF of water contracted from the UYWCD was expressly permitted to be usable for other uses to the extent not needed in augmenting the existing infiltration gallery. The Decree wording is:

“D. Some or all of the 552 acre-feet per year of augmentation water described in paragraph 5.B above may be used by the City for uses other than in the augmentation plan decreed herein. To confirm that sufficient replacement water remains available for the present plan for augmentation, the City shall submit yearly accounting acceptable to the Division Engineer's office showing the amount of the Stagecoach Contract Water used in the present case and any amounts of the Stagecoach Contract Water placed to other uses. The City shall also annual projected use of the Stagecoach Contract Water for use in the present augmentation plan and for other anticipate Stagecoach Contract Water for all uses cannot cumulatively exceed 552 acre-feet per year.”

Has the staff and our water engineers been supplied with the justification for the total of 1,200 AF when a portion of the existing contracted 552 can be legally used to augment water pulled from the proposed 1.0MGD expansion by the City? Has staff and our water engineers affirmed to us that the City needs and will use the additional 648AF requested?

2. The District water sales revenues declined by about \$300,000 a year, starting next year, inasmuch as the 7,000AF of Tri-State allotment has been cancelled. In 2011, the water sales revenues declined by \$104,000 when Tri-State terminated its allotment contract for 4,000AF out of Yamcolo Reservoir which, under the 1992 contract, was deliverable by exchange out of Stagecoach Reservoir. Our water sales revenues have

materially declined.

3. Near the bottom of page 3 of the City letter, the City quotes CRS Section 37-45-123, regarding Class B Assessments by a Conservancy District. A little explanation: Per Section 37-45-121, Conservancy Districts may collect “taxes and special assessments,” and the authority is then classified as Class A authority, Class B authority, Class C authority, and Class D authority. Under Class A authority, the District has set a “general” mill levy on all property within the District at 1.82 mills, for many years, such mill levy having been “de-Bruiced” and approved for indefinite continuation by the voters of the District more than 20 years ago. Under Class B authority, the District may “levy and collect assessments for special benefits accruing to property within municipalities for which use of water or capacity of works is allotted as provided in section 37-45-123.” Then the operative part of section 37-45-123, of which the City letter quoted only part, is as follows:

“(1) (a) To levy and collect special assessments under class B, the board shall make an allotment of water or of capacity of specified works to each petitioning municipality in the district in the manner provided in this article and in such quantity as will in the judgment of the board, when added to the then present supply of water of such municipality in the case of an allotment of water, or when added to the then present supply of capacity of all other works of such municipality in the case of an allotment of capacity of specified works, make an adequate supply for such municipality and shall fix and determine the rate and the terms upon which such water or capacity of such works shall be sold, leased, contracted for, or otherwise disposed of for use by such municipalities; except that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district and no municipality shall be required to make payments to secure or cover the default or failure of performance pertaining to capital debt of any other participating municipality which participates in a project in which the capacity of the specified works has been allotted to two or more participants.
(b) The board shall examine all rates charged for like classes of service throughout the district and shall by rule and regulation adjust such rates periodically as needed to make such rates within any such class of service equitable.” (My underlining)

On the top of page 4, the City concludes from its reading of Section 37-45-123(1) that: “The City suggests that such a rate should consider the significant contribution made by City property owners via the mill levy and actual costs for providing raw water.” Those two proposed criteria of the City regarding NEW allotment contracts for municipal water are NOT included or described in Section 37-45-123. That is a “leap” with no statutory basis. Section 37-45-123(1) does NOT say that, in setting assessments for water allotment contracts, a District must take into account the Class A general property taxes collected from the municipal contract applicant, and it does NOT say that in setting assessments for new water contracts that the costs of producing the water is determinative. What it DOES say is that the District must charge the price of NEW water to applicants in the same class of service the same price. THAT IS EXACTLY WHAT THE DISTRICT IS DOING AT \$124.42AF/YEAR!! The class of service is Municipal and Industrial water allotments. The District HAS two recent

contracts with M&I applicants for NEW water: The Ski Corp for 250 AF and Peabody for 50 AF. Our price proposal to the City is the SAME price as provided in those contracts. The District IS being equitable, and IS complying with Section 37-45-123(1). The City is taking that statute language and proposing SPECIAL consideration and a discount as to the pricing of NEW water to M&I applicants. It wants special treatment. We cannot change the pricing or terms of new M&I water without changing the Ski Corp and Peabody contracts. I am not in favor of doing that, as evidenced by my motion on March 11.

4. CRS Section 37-45-122(2)(a) says that the District, in setting its mill levy, which cannot exceed 3 mills, shall set the levy to provide funds “for paying expenses of organization, for surveys and plans, and for paying the costs of construction of and operating and maintaining the works of the district, . . .” The pricing of water from Stagecoach is not just set by the costs of operating and maintaining Stagecoach. The pricing of water from Yamcolo is not just set by the costs of operating and maintaining Yamcolo. The levy is to be based upon the surveying, planning, constructing, operating and maintaining “the works” of the district. The definition of “works” in CRS Section 37-45-103(10) means:

“dams, storage reservoirs, compensatory and replacement reservoirs, canals, conduits, pipelines, tunnels, power plants, and any and all works, facilities, improvements, and property necessary or convenient for the supplying of water for domestic, irrigation, power, milling, manufacturing, mining, metallurgical, and all other beneficial uses.”

The UYWCD requested, paid for, and reviewed studies from our water engineers regarding the exposure of the District to severe drought conditions, just as the City has done. Those studies confirmed a need to “firm up” the reliability of the supply of water in Stagecoach Reservoir. The UYWCD requested, paid for, and reviewed studies from AECOM regarding various methods, including estimations of cost, to “firm up” the reliability of the supply of water in Stagecoach Reservoir. The UYWCD directors were engaged in such studies when Tri-State G&T cancelled its 7,000AF allotment contract out of Stagecoach Reservoir. Based upon that event, the board voted to suspend further expenditures on the evaluation and engineering of the firming of Stagecoach Reservoir. We did not cancel that long-term effort. We put the potential of project “on the shelf” pending further future developments. The potential continued decline of flow in the Colorado River, and the corresponding potential of inadequate delivery of the upper basin states at Lee’s Ferry, means that the UYWCD board must be vigilant in maintaining the potential and possibility of a major-cost firming project for Stagecoach Reservoir, one possibility of which is the construction of Morrison Creek Reservoir which would cost upwards of 25M to 30M dollars in today’s dollars. Any such firming, including Morrison Creek Reservoir, IS part of the “works” of the District, and CAN BE paid in material part from the property tax mill levy of the District. Given the restrictions of TABOR, decreasing the District’s mill levy is something I cannot support. To the extent the City Manager implies or infers in his letter that the property tax contribution of City residents justifies a lower water allotment contract rate out of Stagecoach Reservoir, it assumes that the sole purpose of such property taxes is for Stagecoach, which is not the case. A firming project as may ultimately be planned and constructed as “works” of the District is likely to exceed substantially the current level of reserves of the District. There is no assurance a debt

issue would be approved by the District's electors. It is therefore prudent for the District to continue its 1.82 mill levy for the broad scope permitted under the statute, including the accumulation of funds for future responsible "works" of the District, and it simply is a non-sequitur to contend that such tax revenues at such rate (which was approved by City voters as part of the de-Brucing election more than 20 years ago) are a justification to reduce the District's stated public rate for new water allotment contracts for new water out of Stagecoach—currently about \$124.42AF/year.

5. The City Manager's letter says that at the March 2 negotiation meeting between Messrs. Brenner and McBride and myself, "the District committed to provide to the City 1) its proposed rate-setting methodology for new contracts, 2) the "denominator" it plans to use to set rates in consideration of contracted v uncontracted water, 3) its Capital improvement Plan and its Replacement and Maintenance Plan, and 4) an account of how the District intends to apply the property tax revenues collected from its constituents towards capital maintenance and replacement reserves at Stagecoach Reservoir." I personally do not recall that I made the 4 commitments stated. My recollections are:

- (1) We said the rate-setting for new contracts was a determination made by the District from multiple inputs and resulted in a pricing set and agreed to by the Ski Corp for 250AF and Peabody Coal for 50AF, at \$124.42/yr for water year 2020, adjusted for the CPI every year thereafter, and ends in November of 2041. I recall saying that the examination by consultants of other water pricing, applicable for retail potable water providers, is NOT applicable for raw water providers such as UYWCD. I said there were NO comparables on the Yampa River for pricing of new M&I allotment contracts EXCEPT the River District's pricing of M&I water out of the Elkhead Reservoir enlargement, which in a December 28, 2018, Memo, for water sales in 2019, was \$191.25AF/year for M&I water. In other words, if you want UYWCD to base its rate on "comparables" on the river, for the Yampa, the rate would be near \$200AF/year. Almost ALL discussion was the objection by City parties to the statement that we would not do perpetual contracts anymore. I do not believe that I committed to providing methodology for new contracts beyond the above.

- (2) The "denominator" discussion was SOLELY related to existing water allotment contracts, i.e., the City's 552AF contract, and other existing M&I contracts, because in paragraph 4.3 of virtually all such contracts, the following calculation is made year by year after the end of the initial 30-year term, i.e., from now forward:

"4.3 The purchase price during the extended period (on a per-acre-foot per year basis) shall be based upon the District's costs of operating, repairing, renovating, and maintaining Stagecoach Reservoir. The price per acre-foot for any given year shall be computed by dividing an estimate of the annual costs (computed each year) the District expects to incur for the operation, repair, renovation and maintenance of Stagecoach Reservoir (including replacement costs) as computed pursuant to standard accounting procedures, by 15,000 acre-feet . . ."

I said specifically at that March 2 negotiation meeting that, if the existing contracts are to be AMENDED by negotiations to set pricing other than annual determinations under Section 4.3, the UYWCD would want to have a full discussion of amending the 15,000 AF denominator. The reasons, I explained, are simple, since I was a negotiator for the District back in the 1980's and 1990's when the contracts for Stagecoach were all done: At that time, the District's allotment contracts to Colorado Ute (in 1992 amended to Tri-State) were for 4,000AF out of Yamcolo and 9,000AF out of Stagecoach, and Yamcolo water was to be delivered out of Stagecoach by exchange, and there were about 2,000AF of other M&I contract commitments, including the City's 552AF contract, all of which adds up to 15,000AF. Now, with the demise of all Tri-State contracts, the District has about 2,400AF, plus or minus, in M&I contracts, plus the 2,000AF committed by the District to its master river water augmentation plan per Water Court decree. If the District contracted 650, plus or minus, additional to the City, that would make a total of about 5,000AF of water contracted for delivery out of Stagecoach, in total, NOT 15,000. Hence, the continuation of that denominator works against the interests of the UYWCD. But the District has no ability, or intention, to change that Paragraph 4.3 wording UNLESS the M&I water allottees desire to FIX an annual water charge rate for the EXISTING contracted water, in which case the District and such M&I users are going to have to meet and discuss and negotiate those terms, WHICH HAS NOT OCCURRED! But the point here is that the "denominator" issue for the District is wholly unrelated to NEW water pricing.

(3) I believe Kevin McBride said he would provide to the City the studies of the District Engineer regarding the replacement costs of both reservoirs. I understand such information has been provided.

(4) I have absolutely no recollection that I said or affirmed that the District would provide "an account of how the District intends to apply the property tax revenues collected from its constituents towards capital maintenance and replacement reserves at Stagecoach Reservoir." I have no recollection that Kevin McBride made any such commitment. If Mr. Brenner said that, he was not speaking for me.

6. It was definitely not my understanding that we would provide such information preparatory to a negotiation with the City regarding the pricing of NEW water contracts. We said Kevin McBride would meet with the City and provide an explanation of how the UYWCD would compute the re-pricing of EXISTING water contracts for M&I if it were done as of the 2019 audit, notwithstanding the caveat that the Section 4.3 is a forward looking computation based upon budgeting, and will not be applied by the District until after 2021. I never said, and I never heard Mr. McBride to say, that the price for NEW water contract was going to be subject to such negotiation. I said the board had already set new water pricing for the Ski Corp and for Peabody at the figure which results in \$124.42 this year, and I believed that is the pricing policy for new water out of Stagecoach for M&I use. I never said that we would await further negotiation. In fact, as you know, I made the motion at the March 11 board meeting to confirm that \$124.42 pricing for a contract ending November 2041

with a “right of first offer” as the proposal the District would tender to the City. It is absolutely true that the City representatives have consistently said they want a different price for NEW water, a price that they have never given to us. Apparently, some unknown number obviously below \$124.42. But as one of the two negotiators for the District, I can affirm to you that I have always consistently said that the price for NEW water is unrelated to the calculation of pricing under the EXISTING contract of the City, and that while we are in negotiations regarding the existing contract pricing, we will, and by board action have, specified the pricing and duration and terms (similar to the Peabody contract except as to length) of the NEW water contract as requested. I distinctly remember saying at the March 2 meeting that if the City didn’t want to enter into an allotment contract for NEW water on those terms, then they certainly didn’t have to do so. It is the City’s choice.

7. The municipal rate, renegotiated with its 1,010AF customers in 2011, for Yamcolo water was NOT based on CPI from \$26/AF. I know. I was the sole negotiator for the District with the Yampa Irrigators Association and the M&I allottees in that era. We first negotiated over a 2 year period a proposed interim new price for agricultural water. Then, since the original pricing of ag water to M&I water out of Yamcolo had been at a 7.1-1 ratio in 1979 (I know, I was on the board and materially involved in those negotiations then), we then went to the M&I users in 2011, WHOSE CONTRACTS HAD ALL EXPIRED AFTER 30 YEARS, and we said we would enter into further limited term contracts expiring in 30 years (now, November of 2041), at an annual allotment price of 7.1 times the ag rate, resulting in a price of somewhere in the mid to high 70's, and would require a CPI adjustment, which has now lifted the M&I price out of Yamcolo to about \$85AF/year. Every single one of the 5 M&I allottees out of Yamcolo readily agreed to the pricing and contract proposal for NEW water contracts, and all signed up new contracts in a fairly short period of time.
8. A CPI adjustment to the City’s 1989 \$35AF/year price for Stagecoach water, adjusted to 2020, is NOT \$70AF/year. It is \$82.11. Go to <https://www.in2013dollars.com/Denver-Colorado/price-inflation/1984-to-2019?amount=20>; adjust the start year to 1989, start price to \$35, it will give you a price over \$80 in 2019, then adjust for about 1.75% 2019-2020 inflation, you get \$82.11. I don’t know where that \$70 came from. So, the pricing Kevin McBride has given to the City representatives for the likely calculation of EXISTING M&I contracts in 2022 is likely BELOW the 30-year CPI change on the City’s original \$35AF/year pricing.

I REQUEST THAT THE DISTRICT MANAGER OR ATTORNEY OR THE DISTRICT BOARD PRESIDENT FORWARD THIS EMAIL ON TO THE CITY MANAGER AND TO JON SNYDER AND TO JASON LACEY TODAY. THANK YOU. THIS IS NOT INTENDED TO BE A CONFIDENTIAL COMMUNICATION.

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