



STATE OF
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Pueblo West - CS-U/Super Ditch Following-Leasing Pilot Project

1 message

Bob Krassa <bob@krassa.com>

Wed, Nov 20, 2019 at 9:06 PM

To: Megan Gutwein <MG@bhgrlaw.com>, "Tia M. Gerung" <tmg@bhgrlaw.com>, Abigail Ortega <ajortega@csu.org>, Alan Leak <alan.leak@respec.com>, "alanc@white-jankowski.com" <alanc@white-jankowski.com>, Alexander Funk <alexander.funk@state.co.us>, "amalotte@bbawater.com" <amalotte@bbawater.com>, Ayrton Hendrix <aytron@hendrix-wai.com>, Bill Tyner <bill.tyner@state.co.us>, Chris Beightel <chris.beightel@ks.gov>, Craig Lis <clis@martinandwood.com>, "dniemela@bbawater.com" <dniemela@bbawater.com>, "ewilkinson@csu.org" <ewilkinson@csu.org>, Gerry Knapp <gerryknapp@gmail.com>, Jeffrey DeHerrera <jdeherrera@pwmd-co.us>, Kevin Salter <Kevin.Salter@ks.gov>, Krystle Ervin <KErvin@martinandwood.com>, "lawma@cminet.net" <lawma@cminet.net>, Lori Lest <lori.les@state.co.us>, "Matthew A. Montgomery (matthewmontgomery@hillandrobins.com)" <matthewmontgomery@hillandrobins.com>, Rachel Duran <rachel.duran@ks.gov>, Rachel Zancanella <rachel.zancanella@state.co.us>, Randy Hendrix <Randy@hendrix-wai.com>, Richard Mehren <rmehren@mwhw.com>, Scott Lorenz <slorenz@csu.org>, "Stephen H. Leonhardt (sleonhardt@bflaw.com)" <sleonhardt@bflaw.com>, Tracy Kosloff <tracy.kosloff@state.co.us>, Wendy Hunker <Wendy.Hunker@state.co.us>, William Caile <WHCaile@hollandhart.com>
Cc: "Jeffrey DeHerrera (jdeherrera@pwmd-co.us)" <jdeherrera@pwmd-co.us>, "alan.leak@respec.com" <alan.leak@respec.com>

Hi Megan – after reviewing the draft conference report, Pueblo West believes the following terms and conditions need to be added or incorporated into any approval of the proposed Pilot Project.

1. No exchange for the Pilot Project may be operated past the Avondale gauge when the flow at that gauge is below 500 cfs or that would reduce the flow at that gauge below 500 cfs, regardless under which decree, or which administrative approval, the exchange is operated. This is an extremely important provision which would not be sufficiently presented if merely incorporated by reference to some other document.

2. It needs to be clear exactly how each exchange is going to be used to support this project. There are two exchanges mentioned in the engineering report: a) 05CW96 which is Colorado Spring's exchange, and b) 10CW04 which is the Super Ditch exchange case. The 10CW04 case specifically limits the sources of substitute supply for the exchanges to lease water from the water rights in Paragraph 12 of that decree. We believe that the exchanges in 10CW04 are the only exchanges available to initially move leased water up to Pueblo Reservoir. The exchange from Fountain Creek to Pueblo Reservoir in 05CW96 can then only be used to exchange the return flows from leased water flowing down Fountain Creek. If this is not the case, Pueblo West is concerned that Colorado Springs in 05CW96 may be used as a way to get around limitations in the 10CW04 decree, specifically including the Colorado Springs priority date of 8/20/2018 in 10CW04. It should also be specified that using the exchange in 05CW96 for this project is subject to all the provisions in that decree, including specific provisions and identification of what "Class" of water is considered in this Pilot Project.

3. Prior to any approval, Super Ditch's engineers must explain by a supplemental report sent to all parties, whether the results of the Lease Following Tool (LFT) are consistent with the findings in the Catlin Change Case (12CW94), and if not, why the findings of that case are not being used? A lot of time was spent to assure that the terms and conditions in that case and in 10CW4 were sufficient to prevent injury to Pueblo West's exchanges and to other water rights.

4. There shall be no renewal of this temporary lease/fallowing project after the ten year term. Any continuation of this operation must first obtain Water Court approval under the resume-notice procedure.
5. Lagged return flows must be replaced upstream of the location of the lagged return flow at all times.
6. Super Ditch must lease enough space in Pueblo Reservoir to assure that the requirements of the 10CW4 Decree are met, prior to exchanging water into Pueblo Reservoir.
7. The stepped exchange provisions in 10CW4 should be applied to all exchanges under the Pilot Project regardless under which decree, or which administrative approval, the exchange is operated.
8. Delivery of return flow water that is needed to replicate historical conditions must be made on a daily basis; only excess return flow water can be stored for later release.
9. In order to receive HCU credit, dry-up must be confirmed and monitored by (a) establishing monitoring wells or piezometers on all dry-up parcels except those approved by the Division Engineer as not being susceptible to high groundwater table; (b) notifying all parties to this proceeding and those in Case 10CW4 as to the location (by legal description and map) of all dry up parcels no later than 1 March for the coming year; and (c) posting those parcels sufficiently to allow "windshield" or "drive by" confirmation of the absence of plant growth attributable to high ground water or irrigation.
10. The effect of alternating a parcel between fallowed and irrigated require further study to determine whether such a practice would increase the actual consumptive use on those parcels for years when they are being irrigated. If during the 10 year project, they switched back and forth every year from irrigation to fallow, in the five years when the parcel was being irrigated it would consume more water than during the historical average year, and so if Super Ditch got the average credit for the five years of fallow, the total for the 10 years would be too high. The solution would be to reduce the credit for years of fallow so that the ten year average would be protected.

If Craig Lis has any questions about the above, he is free to discuss with Pueblo West's engineer Alan J. Leak, P.E. without the need for any further approval by me.

Thanks!

Bob Krassa

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From: Tia M. Gerung [mailto:tmg@bhgrlaw.com]

Sent: Thursday, November 14, 2019 1:26 PM

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Cc: Megan Gutwein

Subject: CS-U/Super Ditch Following-Leasing Pilot Project

All,

Attached is a draft joint conference report for your review and comment. Megan sent this to you yesterday, however, due to a server problem on our end, the email was not delivered. When we learned of this problem, Megan asked me to resend the attached draft joint report.

Per Megan's original email, the final joint report is to be submitted by November 21st. Please send your edits to Megan by no later than November 20th. It would also be helpful if you could send her any substantial edits sooner so that she can endeavor to work out any differences prior to submitting the final report. If there is anything you would like to discuss with Megan, please feel free to call or email her (303-402-1600, mg@bhgrlaw.com).

Please note that Martin and Wood is still conducting more analyses as discussed during the conference, so we will send out those results and revised tables as soon as possible.

Thank you and we apologize for the delay in sending this draft.

Tia

Tia Gerung

Paralegal



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