Legal & Governance Committee

Meeting Minutes

Date/Time: Tuesday, 9 February 2021/10:00-11:30 AM

Attendees: Steve Miller, Chairperson

Steve Raab, Committee Member

Barb Shoemaker, Committee Member

Mike Walsh

Phil Vasta

Seth Fullerton, Legal Council

Kim Visser

Bryan Romero

Reference: Seth Fullerton memorandum entitled *Status of Water Rights*, dated 20 August 2020.

This meeting was called to provide Seth Fullerton an opportunity to review the contents of the referenced memorandum with the Co-op’s Board of Directors, the GM, and staff; and to address additional questions that had been separately generated by Steve Miller, Mike Walsh, and Phil Vasta. Details of the meeting can be obtained by reviewing the Zoom meeting recording available from Kim Visser.

Actions/conclusions reached during the meeting include the following:

1. Loss of water rights
   * Based on Seth’s presentation, it was concluded that there is little to no risk of the Co-op losing any of our water rights under the mechanisms the referenced memo describes.
2. Offset water rights contribution
   * Based on prior agreements, the Co-op is required to contribute water rights to offset historic pumping conducted by the LCLP.
   * In CY2020, this contribution was 105.50 ac-ft and continues on a declining basis through the year 2100 and beyond.
   * Based on Bryan Romero’s water consumption assessment, there is a potential for the Co-op’s water consumption to exceed the 709.5 ac-ft limit under a “worse-case” scenario by the year 2040. Early elimination of the offset water rights contribution would preclude the Co-op from exceeding the 709.5 ac-ft limit.
   * The Co-op currently holds excess water rights that will diminish over time.
   * **Actions**:
     + Determine the appropriate Party/Parties (i.e., City of Santa Fe, Santa Fe County, NM State Engineer) required to provide approval of an early payoff.
     + Determine the appropriate timeframe to compress the offset payments (e.g., return the equivalent waters rights over the next 20 years rather that over the next 80).
     + Engage the appropriate Party/Parties to negotiate an early payoff of the offset requirement. If the parties are open to an early payoff, develop a recommendation for Board approval.
3. Transfer of additional water rights to Santa Fe County

* At the end of calendar year (CY) 2020, the Co-op had consumed 316.8 ac-ft of water. Given the pace of Las Campanas build-out it was concluded that the Co-op’s demands would likely exceed the 332 ac-ft limit of the current water rights deeded to the County within CY 2021. In accordance with current agreements additional water rights would need to be transferred to the County before the end of this CY.
* The question at-hand is how far into the future should the Co-op project its demand. It could range from a single year to transferring all available remaining water rights. Seth Fullerton stated that there is no “down-side” to transferring all remaining water rights. He recommended a 5-year projection which equates to an approximately 100 ac-ft increase.
* **Actions**:
  + Determine the Club’s potential demand for excess water rights as far into the future as possible.
  + Factoring in the offset water rights and the Club’s demands, develop a recommendation of the amount of additional water rights to be transferred to the County for Board approval.

1. Participation in BDD
   * The topic of the Co-op’s continued participation in the BDD as a limited partner was briefly discussed. Seth Fullerton mentioned that a revised agreement had been drafted several years ago that addressed this topic. One advantage to the Co-op becoming simply a “bulk water customer” is that we would no longer be liable for the fixed and variable OMR&R charges, which will likely grow as the facility ages.
   * **Action:** Seth Fullerton to provide a copy of the draft, revised agreement for the Board’s review and consideration, and review the Co-op’s legal consequences of withdrawing from the BDD.
2. Water rights communications with Members
   * It was agreed that the referenced memorandum would be retained as Confidential, Attorney-Client Privileged, and not distributed to the Members.
   * A separate historical overview is to be developed in coordination with Seth Fullerton for dissemination to the Members.