

# MINUTES

UTILITY COMMITTEE OF THE CITY COUNCIL  
HELD AT ALPINE BANK BUILDING, ROOM 205  
APRIL 22, 1996

PRESENT: R. T. Mantlo, Linda Afman, Jim Baughman, Mark Achen, Ron Lappi, Greg Trainor, Terry Franklin, Dan Wilson

START: 2:00 p.m.

Three items were on the agenda to be discussed:

1. Lack of response from PMLWC on City's offer to purchase company and proposed letter to State Engineer on "winter stock water" and "use of Juniata Ditch."
2. Opposition to PMLWC "change of use" application for irrigation water.
3. Consideration and action of "breaches" on existing contracts and agreements between the City and PMLWC.

The objective of the meeting was to receive Council committee direction on "where we go from here" after receiving no response from the Purdy Mesa Livestock Water Company to the City's offer to purchase.

Other agenda items are related to the above objective.

Jim Baughman reported to the committee of his lunch with Bob Black, Vice-president of the PMLWC. Mr. Black had reviewed the Company's plans to acquire reservoir water as a supply for their Company and asked if the City would oppose their change of use applications if it could be shown that there was no damage to City water rights.

There was discussion on this topic, the result of which was a recommendation that the City take no action on the Company's filings until the Company actually files in the Water Court.

The City owns a number of water rights, some of which would be affected by the Company's proposed changes. However, until an actual filing is made and the sources and uses identified, the City cannot know how it would be affected. The compelling argument is that, by waiting until a filing is made, the City will be dealing with the Company's water attorney and hydrologist who will be able to determine how or if City rights are affected. In the absence of Company experts, the City would be placed in the position of studying and verifying, at City expense, the Company stockholder representations.

The committee further discussed, as background, the Company's failure to respond to the City's offer to purchase the Company. It was concluded that, although the City was a willing purchaser to the extent of the written contract tendered on March 1, 1996, the Company was not a willing seller, having made no counter offer except to demand additional water taps before any purchase negotiations could take place.

There was speculation as to what the Company might want as to cash, but without a counter offer, no decision could be made by the committee.

The committee recommended sending to Ken Knox, the Water Division 4 State Engineer, a letter stating the City's continuing concerns about the Company's use of the Juniata winter stock water.

The committee discussed the Company's adherence to the 1989 Water Purchase Agreement and the 1992 Land Conveyance Agreement, specifically not operating with a certified operator and by modifying the ditch crossing Company property without written approval from the City. The Committee recommended sending a letter to the Water Quality Control Division concerning the Company's compliance with state law. In addition, the City should send a letter to the Company reminding them of their obligations under the agreements. A formal breach letter will be drafted but held until after the run-off peaks to determine the performance of their plant and to follow-up on their compliance to their agreements.

In summary, conclusions and actions are as follows:

- (1) Company is not a willing seller.
- (2) Even if Company were a willing seller, the City needs to be careful as to further offers so as not to pay more than fiscally responsible.
- (3) Determine from State records, the Company's plant performance.
- (4) Express our concerns to the State of Colorado concerning the Company's lack of a certified operator and obtain a commitment from the State as to enforcement on this issue.
- (5) Write the Company regarding their compliance under the aforementioned agreements.
- (6) Forward the City letter to the State Engineer for Water Division No. 4 on the City's continuing concerns as to the Company's use of winter stock water.

MEETING ENDED: 3:40 p.m.

cc: City Council  
City Clerk  
Department Heads  
Utility Staff