

**GRAND JUNCTION CITY COUNCIL
WORKSHOP**

**MONDAY, JULY 30, 2012, 11:30 A.M.
ADMINISTRATION CONFERENCE ROOM
2ND FLOOR, CITY HALL**

To become the most livable community west of the Rockies by 2025

- 1. Powderhorn Water Leases:** Powderhorn Ski Area has requested to lease 140 acre feet of water from the City's Somerville Reservoir. This is for the purposes of snowmaking. [Attach W-1](#)
- 2. FPPA Resolution:** City Council will consider the next steps in furtherance of possible re-affiliation with the Colorado Fire and Police Pension Association. The City Council received information from the City's fire, police and general employees retirement boards on July 9 and may also discuss that information.
- 3. Council Boards Update**



Date: July 18, 2012

Author: Greg Trainor, Utility and Street Systems Director

Title/ Phone Ext: 1564

**CITY COUNCIL STAFF REPORT
READINESS SESSION
Attach W-1**

Topic: Powderhorn Ski Resort Request for Water for Snowmaking
Staff: Greg Trainor, Utility and Street Systems Director John Shaver, City Attorney Andy Daly, Powderhorn Ski Area

Summary:

Powderhorn Ski Area has requested to lease 140 acre feet of water from the City's Somerville Reservoir. This is for the purposes of snowmaking.

Background, Analysis and Options:

Geography The Somerville Reservoir (Reservoir) is located in the Whitewater Creek drainage on the top of the Grand Mesa. It has a storage capacity of about 1,000 acre feet of water. Once released from the Reservoir, the water spills over the edge of the Grand Mesa escarpment into WhitewaterCreek and the Brandon Ditch and used for irrigation on the Somerville Ranch, The Reservoir also has a water right for municipal and industrial purposes. The Reservoir is approximately two miles west of the Powderhorn, Ski Area, via the Picket Pass and the West Bench trail.

Detail of request The request is to construct a control valve and pump station on the downstream end of the Somerville Reservoir outlet works. This would be a combined project with the City of Grand Junction which would line the reservoir outlet works and install valves and automated controls on the reservoir outlet works. Powderhorn would construct approximately 10,500 of buried pipeline in an easterly direction, across the Grand Mesa, and down Picket Pass to the top of both of Powderhorn's two lifts. The City would provide an easement for the pump station, pipeline and electrical infrastructure as well as a "lay down" yard for construction materials.

Powderhorn proposes to lease approximately 140 acre feet of water and construct their mountain snowmaking facilities over a ten year period. Their initial use of water would be approximately 60 acre feet.

Survey work, geotechnical investigation, design and design review by the City, State Engineer's office, and Army Corp of Engineers (if necessary) would take place during the 2012 summer season with construction to begin in the 2013 summer season.

Board or Committee Recommendation:

A negotiation committee is made up of Rich Englehart, City Manager; Sam Susurus, City Councilman; John Shaver, City Attorney; Greg Trainor, Terry Franklin, Rick Brinkman, and Bret Guillory.

Financial Impact/Budget:

Annual revenue from the lease of water would be at a rate of \$200.00 per acre foot. This would range from 60- acre feet in the beginning to 140 acre feet at build-out.. Annually, the cost of water would be adjusted by 50% of the Denver/Boulder CPI.

In certain water years, leases of water to Powderhorn may reduce the amounts of water available for supplemental irrigation in the Kannah Creek area. This impact would be estimated at a loss of \$2,450 (140 acre feet at \$17.50 per acre foot.).

Legal issues:**Other issues:**

None

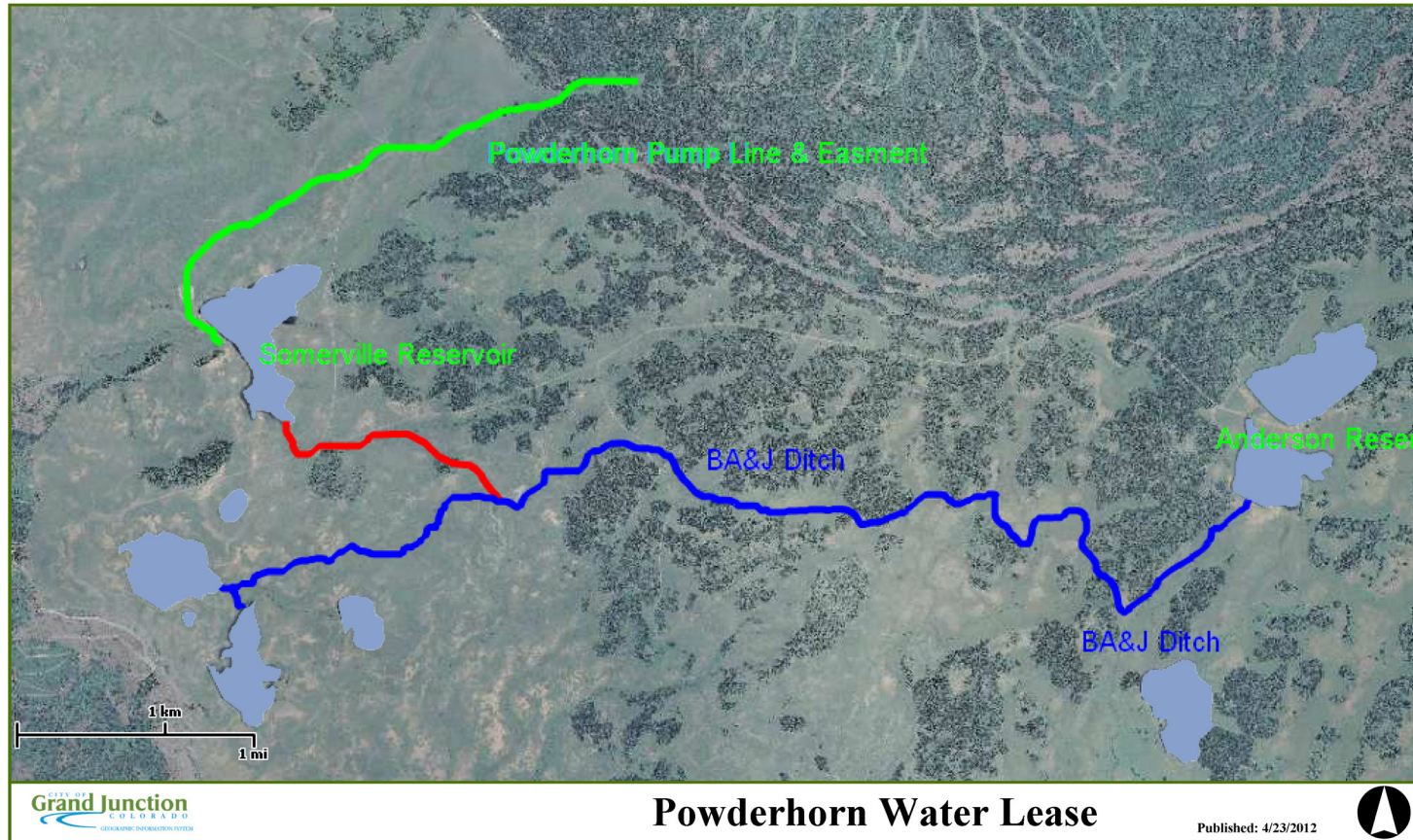
Previously discussed:

The previous owners of the Powderhorn Ski area met with the City of Grand Junction, Utility staff in 1999, 2000, and into 2001. Purposes and terms were similar then as now. Lease water for early season snowmaking. City Council met in executive session on August 30, 1999 and authorized the City Manager and staff to proceed with discussions with Powderhorn. No agreement was reached with Powderhorn at the time, although their proposal for transporting water, via pipeline, from the Somerville Reservoir to Powderhorn was included in Powderhorn's July 2000 updated master development plan submittal to the United States Forest Service. An EA was conducted on the proposal and approved by the USFS.

In the summer of 2011, Powderhorn owner Andy Daly met with utility staff and indicated he would be bidding on the purchase of the Powderhorn ski area at auction and requested the City consider a lease of water for snowmaking. Mr. Daly subsequently was successful in his bid for the Powderhorn properties.

In the summer of 2011, staff met with City Council and received the go-ahead to negotiate with the new owners of Powderhorn, subject to City Council approval of any draft water contract provisions.

Attachment A



RESOLUTION NO. ____-12

A RESOLUTION AUTHORIZING THE AGREEMENT BETWEEN
POWDERHORN __ AND THE CITY FOR USE OF CITY WATER FOR
SNOWMAKING AT THE POWDERHORN SKI RESORT

RECITALS:

On July 30, 2012 the City Council considered a proposed agreement by and between the Powderhorn __ and the City for the lease of certain City water to Powderhorn for snow making.

Councilmember Susuras, City Manager Englehart, City Utility Director Trainor and City Attorney Shaver and staff from the water and engineering departments have negotiated with Powderhorn and have informally come to terms.

The negotiating team recommends approval of the agreement.

The City, by and through the City Council and the signature of its President, does hereby approve, authorize and ratify the terms, covenants, conditions, duties and obligations to be performed by the City and Powderhorn in accordance with the contract and does direct that the City perform under and according to the agreement.

DATED this _____ day of _____ 2012.

Bill Pitts
Mayor and President of the
Council
City of Grand Junction, CO

Attest:

Stephanie Tuin
City Clerk

AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION AND POWDERHORN

_____ (?)

This AGREEMENT is made and entered into by and between the City of Grand Junction, hereinafter referred to as the City and Powderhorn Ski Area, hereinafter referred to as Powderhorn. Collectively the City and Powderhorn may be referred to as the Parties. Powderhorn may be referred to as Lessee.

A. PURPOSE:

Formalize the collaboration and agreement between the City and Lessee for the use by Lessee of a maximum of 140, non-interruptible, acre feet of the City's municipal water supply for snowmaking, which may be referred to as the Project.

Develop and implement a mechanism for continued communication and consultation between the Parties in the processes and practices of drawing and using the water for the Project for the purposes of and in accordance with this Agreement; and

To ensure an appropriate level of continued involvement by each party in Project planning and development and compensation to the City.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Parties are committed to working together, not as legal partners or joint venturers but as collaborators, to develop the Project that will serve to draw, transport and apply the water, as established by agreement between the Parties, to beneficial use.

The Parties recognize and agree that use/development decisions made by one party affect decisions by the other and that in order to accomplish the Purposes of this Agreement each Party will be presumed and reasonably required to act to benefit the other.

The Parties further recognize and agree that communication from one party to the other is key to the success of the Project.

C. LESSEE SHALL:

1. Use the water supplied pursuant to this Agreement for snowmaking at the Powderhorn ski area. The approximate locations of the snowmaking equipment are shown on attachment A.
2. Design and construct a pump station, pipeline and other means of drawing and conveying the water from the Somerville Reservoir. The approximate location of the pump station and pipeline are shown on attachment B.
3. Pay the cost of construction, installation, operation and maintenance of the necessary pump station, pipeline, electrical service, meter(s) and other means of drawing and conveying the water.
4. Reclaim/revegetate the City-provided temporary construction easement/material storage area upon completion of construction. The City shall prepare the reclamation/revegetation plan for the Lessee's use.
5. At all times use good land stewardship practices, including dust mitigation, erosion control and noxious weed control, on City property that is used by the Lessee.
6. Pay a per acre foot charge of \$200.00 from 2013 -2053, for each and every acre foot drawn from the reservoir, including transportation losses from evaporation when transferring water from the Anderson Reservoirs to the Somerville Reservoir.

The per acre-foot charge will be adjusted each year by 50% of the Denver Boulder CPI/U.

Flow meter(s) shall track usage to the nearest gallon.

A 17.5% evaporation rate for water transferred from the Anderson Reservoirs to Somerville shall be applied. For example at that rate (17.5%) if Powderhorn bought 100 acre feet for the 2013/14 ski season, the City would transfer 117.5 acre feet to the Somerville Reservoir in order to account for evaporative loss from the ditch transfer from one reservoir to the other. The evaporation rate will be reviewed and may be adjusted by the City after four of transfers for the Project. The evaporation rate shall be set as closely as possible to reflect actual losses.

7. Payment to the City will be made November first of each year for the amount of water that Powderhorn will buy for the following year. The first payment shall be made in the year the pipeline and pump house are substantially

complete and operational.

8. Powderhorn shall notify the City by April 30th of each year, in writing to the person and at the address shown herein, of the number of acre feet of water it intends to purchase for delivery the subsequent fall/winter.
9. In order to ensure availability of water in case of two successive drought years, with a "drought year" being declared by the City, Powderhorn shall pay, in the first year of a declared drought, the City 2x the acre foot rate for each acre foot to be delivered to the Project that and the following season. In other words, Powderhorn shall pay for the second year in advance to ensure availability.

In any year Powderhorn may elect to reduce the amount of water that it pays for in advance should it chose to reduce or eliminate the intended delivery for the subsequent year. In year 2 of a drought Powderhorn shall pay for year 3 and in year 3 it will pay for year 4. Failure to pay shall cause any protection that the City may afford under this term to be negated.

D. CITY SHALL:

1. Provide a use easement for the term of the lease for the pipe and a temporary construction easement/material storage area for construction staging/construction management. City will also provide a lay down area for construction of the pump house and pipeline which area which be returned to the city in a clean and seeded condition.
2. The water for the Project shall be first made available by the City by October 15 and end on or before April 15 of each year. The means and method of the delivery shall be determined by mutual agreement of the parties.
3. Volume and dates of availability of water for the Project are assumed as follows: a) up to 140 acre feet at build out of the snowmaking system; b) build-out is not anticipated for ten years; and c) at completion of the first phase of the snowmaking system on or about ___ 201___, Powderhorn will require approximately 60 acre feet.

E. BOTH PARTIES SHALL:

1. Cooperate in Project construction decision making especially when the decision(s) has or may have an impact on water quality. That cooperation shall be made and/or given in a manner consistent with the responsibilities and authorities assigned by this agreement or other applicable law or policy.
2. Work together to achieve maximum benefits from available resources while safeguarding the City's water quantity and quality. Efficiency and effectiveness toward attaining that goal can be made by a reduction in the duplication of effort and working to attain better overall coordination of land and ecosystem management.
3. Make available, upon request, survey and topography documentation.
4. During the non-snowmaking months, April 15 through October 15, the parties would contemplate that they may employ a "pumpback" to have the opportunity to pump water from Powderhorn back to the Somerville reservoir, for storage for snowmaking purposes. Any such pumpback would be credited against Powderhorn's non-interruptible reserve. The parties have not had the opportunity to fully study the pumpback but believe it could benefit them by reducing the amount of water that would need to be reserved for Powderhorn during drought years. The City and Powderhorn agree that the pump back concept will be studied further and if it is of economic benefit to both entities then this agreement may be modified to provide a credit against the annual water fee or other mutually agreeable consideration.

F. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES TO:

1. **COLORADO OPEN RECORDS ACT (CORA)**. Any information furnished to the City under or pursuant to this agreement is subject to disclosure to others under or in accordance with the Open Records Act.
2. **NON-EXCLUSIVE USE**. This Agreement in no way limits or restricts the City from participating in similar water use projects or activities with other public or private agencies, organizations or persons.
3. **COMMENCEMENT/EXPIRATION/TERMINATION**. This Agreement takes effect upon the signature of the Lessee and City and shall remain in effect for forty (40) years from the date of execution. This Agreement may be extended or amended

in writing with assent to the extension or amendment requiring the same approval/formality as was required at the inception of the agreement.

Either the Lessee or the City may terminate this Agreement with a 60 month written notice to the other(s). Termination shall occur only for and in the advent of a breach of a material term of this agreement as the same is defined herein. Each and every term and condition of sections C, D and E(1), (2) and (3) hereof shall be deemed to be a material terms. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default. If a default is declared notice shall be giving by the non-defaulting party to the defaulting party as provided in section 5. After a notice of default is given the defaulting party shall have a reasonable period of time to cure the default. The parties stipulate and agree for a claimed default that does not credibly present an imminent life, health or safety hazard a reasonable cure period shall be 6 months. In the event the default does credibly present an imminent life, health or safety hazard the cure period shall be as agreed upon but the parties but in any event no less than 72 hours.

In the event of termination the Lessee shall be allowed to remove its pump, pump house, pipeline and other improvements and upon removal shall restore the City property to the condition it existed prior to installation.

4. **RESPONSIBILITIES OF PARTIES.** The Lessee and the City and their respective officers, employees and agents shall be responsible for the administration of their activities and the utilization of their resources dedicated to the completion of the Project by and with the expenditure of their own funds. Each party shall carry out its separate activities in a coordinated and mutually beneficial manner.

5. **PRINCIPAL CONTACTS.** The principal contacts for this instrument are:

_____ and _____. These shall be the persons contacted for purposes of any notice provided for in this Agreement.

6. **NON-FUND OBLIGATING DOCUMENT.** Nothing in this Agreement shall obligate the City to obligate, appropriate or transfer any funds. Specific work projects or activities that involve the transfer or expenditure of funds will require separate budget approval and be contingent upon the appropriation of funds.

7. **AUTHORIZED REPRESENTATIVES.** By signature below, the Parties certify that the signatories to the document are authorized to act in all matters related to, arising out of or under this agreement.

THE PARTIES HERETO have executed this instrument.

CITY OF GRAND JUNCTION

POWDERHORN
