

# DENVER BOARD OF WATER COMMISSIONERS

Meeting Date: October 14, 2009

Board Item: V-B-1

## Approval of Settlement Agreement with City of Arvada

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Action by Consent

Action

Information

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This Agreement would resolve a lawsuit filed in 2008 by the City of Arvada against the Board, disputing the rate charged to Arvada for water under the terms of a 1965 Agreement.

The 1965 Agreement provides for delivery to Arvada of 19,000 acre feet of water annually. One provision of the 1965 Agreement establishes a "preferred" rate, modified over time commensurate with changes in inside-Denver rates, and capped at 90% of the standard outside city nonpotable rate. In 1989 the Board adopted a resolution declaring that future rate-setting would comply with the Charter requirement for full cost-of-service rates for water served outside Denver, and that contractual provisions contrary to this Charter requirement would not be honored. In 1990, Denver Water began charging Arvada the standard outside city nonpotable rate.

In the litigation, Denver Water moved for summary judgment based on both the statute of limitations for contract claims and the inconsistency between the 90% cap and the Charter requirement for full cost recovery. However, the district court failed to rule on any motions, including those that would have affected the schedule, which called for a trial in October 2009. Denver Water and Arvada engaged in mediation and negotiation in late August and early September and were able to reach a settlement. An important part of the settlement is a separate 1999 agreement between the parties under which Arvada is entitled to receive delivery of up to 3000 acre feet of water if Denver Water is able to increase the supply from the Moffat System by about 14,000 acre feet. For each acre foot of water, Arvada will pay an up-front capital charge based on construction costs of the project or projects that achieve the increase in supply, and an adjusted outside combined service area (OCSA) SDC. The rate for water will be the OCSA rate.

The essential items of the settlement agreement are:

- 1) The lawsuit will be dismissed without prejudice. A tolling agreement prohibits the filing of a new lawsuit for 20 years, unless Denver Water is unable to increase the Moffat System supply within that timeframe.
- 2) Arvada will pay the full standard outside city nonpotable rate for water provided under the 1965 Agreement.
- 3) The 1999 Agreement will be amended to establish the SDC Arvada will pay for the 3000 acre feet at \$11,274 per acre foot, which is based on the 2009 OCSA SDC. The obligation to pay the OCSA rates remains unchanged.

The Arvada City Council approved the settlement agreement on first reading October 5, with final reading scheduled for October 19.

Recommendation:

It is recommended that the Board approve the settlement agreement with the City of Arvada, including the amendment to the 1999 Agreement.

Approved By:

  
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General Counsel

Respectfully submitted,

  
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H. J. Barry, Manager