

RESOLUTION 2020-09

RESOLUTION OF THE BOARD OF DIRECTORS OF TRIVIEW METROPOLITAN DISTRICT MODIFYING WATER DEVELOPMENT REQUIREMENTS AND IN-LIEU-OF FEES/SUPPLIES

WHEREAS, Triview Metropolitan District ("District") has determined that it is appropriate to adopt, amend and supplement portions of its existing rules and regulations concerning the District's policy in regards to provision of water supply sufficient to support development to which the District will provide water service as a condition of service in the District's discretion, and in the alternative and in the District's discretion, implementation of a water acquisition fee (*i.e* "in-lieu-of fee") to compensate the District for acquisition of substitute water supplies where water provided by developer is insufficient to cover anticipated demands, and for recovery and funding of the District's existing and future costs in the acquisition and development of such physical and legal water supplies for its customers ("Water Acquisition Fee"). The Water Acquisition Fee may include funding for infrastructure costs associated with the acquisition and development of such physical and legal water supply for the District's customers;

WHEREAS, pursuant to C.R.S. §32-1-1001(1)(h),(j) and (k) and §32-1-1004(3) this Board has the authority on behalf of the District to fix and from time to time increase rates, charges for services or facilities furnished by the District within and outside District boundaries;

WHEREAS, pursuant to C.R.S. §32-1-1001(m) and (n), this Board has the power to adopt, amend and enforce bylaws and rules and regulations for the District that are not in conflict with the constitution and laws of the State of Colorado, for the carrying on of the business of the District, and may exercise all rights and powers necessary or incident to or implied from its specific powers; and

WHEREAS, the District has considered anticipated short and long-term expenses associated with the acquisition and development of physical and legal sources of water for the supplementation and continuation of provision of water service to the District's customers, and associated water infrastructure, and determined it appropriate to amend the District-wide Water Acquisition Fees on new development where insufficient supply is provided to the District by developers to cover anticipated demand, and to recoup and fund such imminent water acquisition and infrastructure expenses; and,

WHEREAS, the District has previously passed resolutions 04-2014, 11-2016 and __-2017 concerning this same issue. This Resolution __-2020 and the terms hereof represent the District's current policies on this subject matter, and all prior resolutions on this subject matter referenced above are to be of no further force and effect.

NOW, THEREFORE, pursuant to the District's authority and the power under C.R.S. §32-1001 and §32-1-1004, the following policy is adopted in regards to the District's requirements for conveyance of legally and physically sufficient water supply to meet anticipated demands for development prior to the District's commitment to provide water and wastewater service to such development, and in the District's discretion, in-lieu-of such sufficient physical and legal water supply, implementation of a Water Acquisition Fee on such development, forming a portion of the District's rules and regulations.

1. Provision of Sufficient Water Supply. Pursuant to the District's inter-governmental agreement (the "IGA") with the Town of Monument (the "Town"), the District does not exercise authority over land use planning matters, but rather such issues are addressed and approved by Town authority. However, in making such land use entitlement approvals, the Town requires that Triview commit that it "will serve" the development subject of the application with water and wastewater services, as a condition of approval by the Town of such land use application. Triview shall provide such "will serve" commitments when requested by the Town, and shall commit to provide service to developments within the District's service area, provided that a sufficient physical and legal water supply is conveyed to the District in an amount commensurate, or in excess of, anticipated demand within the subject development and/or appropriate Water Acquisition Fees paid, in the District's discretion. For purposes of this water dedication requirement, "sufficient" shall mean:

A. Any and all Denver Basin groundwater underlying the real property subject of the land use application to the Town, whether not-nontributary or tributary, whether adjudicated or unadjudicated, and whether or not the quantities of such Denver Basin groundwater are in excess of, or less than, the anticipated demand for the requested development as determined in the District's discretion. All such Denver Basin groundwater shall be conveyed to the District, with evidence of good title to the District's reasonable satisfaction, without charge to the District. No "will serve" letters shall issue from the District in any instance absence conveyance of all underlying Denver Basin groundwater, regardless of quantities;

B. Any and all other surface and/or groundwater owned or controlled by the land use applicant which can be physically and legally delivered to the District to provide water service to the requested development, subject to all other terms and conditions of this resolution. In the District's sole and complete discretion, other agreements with specific land owners pursuant to inclusion, annexation, or water service applicable to any particular such land use application may supersede the provisions of this Paragraph 1.B. based upon fact-specific circumstances which may otherwise benefit the District;

C. For purposes of calculating whether the water supply provided to the District pursuant to paragraphs 1.A. and 1.B., above, will be of a quantity "sufficient"

to meet the anticipated demand of the subject land use application, the following factors shall apply:

i. No groundwater underlying the property subject of the proposed development classified as "not-nontributary" shall be included for purposes of calculating the sufficiency of water provided, unless such not-nontributary groundwater is subject of a previously adjudicated plan for augmentation suitable for the District's purposes, in the District's sole discretion, and (a) utilizing for purposes of replacement of post-pumping depletions associated with such plan for augmentation some source other than underlying nontributary groundwater supplies; or (b) deducting from otherwise available nontributary groundwater resources that quantity so dedicated to post-pumping depletion replacement, both subject to the limitations of Paragraph 1.C.ii., below;

ii. The District shall consider 85% of nontributary groundwater supplies as being available for development purposes, with the remaining 15% being dedicated to the general purposes of the District and for provision of reserve supplies. For purposes of example, were a developer to have 100 annual acre feet of nontributary groundwater available to provide to the District, all such groundwater would be deeded to the District, but the District would provide a "will serve" letter only for development utilizing up to 85 acre feet of supply, for development entitlements to be obtained from the Town based thereon. The quantity of nontributary groundwater supply may be based upon adjudications quantifying such supply (less amounts previously used), or upon calculations by the District's consultants for unadjudicated supplies, in the District's sole and complete discretion.

iii. In the case of surface water supply, or groundwater originating from other than the Denver Basin formations, sufficiency of supply shall be determined by the District on the basis of information and opinions provided by its consultants, in the District's sole and complete discretion. The District expresses its preference that any supplemental water supplies in addition to underlying Denver Basin supplies to be considered for sufficiency purposes be of a renewable nature, evidencing the District's intent to continue to develop a renewable water supply to eventually replace finite Denver Basin groundwater supplies upon which the District currently relies.

iv. In the District's discretion, sufficiency of water supply may be supplemented through payment of a Water Acquisition Fee, as provided below, in such amount as to represent the quantity of water required for the requested development, or the difference between such requirements and the quantities of water available for provision to the District as described in Paragraphs 1.C.i, ii, and iii, above.

2. Water Acquisition Fee. Where an application for land use development has been submitted to the Town, and associated request for a "will serve" letter has been made upon the District, and where the quantities of water described in Paragraph

1.C., above, appear in the District's discretion to be insufficient for the scope of development requested in the application to the Town, the District may, in its sole and complete discretion, accept payment of a Water Acquisition Fee "in-lieu-of" that quantity of water necessary for the scope of requested development, less those quantities of water which may be provided pursuant to Paragraph C, above. Based upon anticipated water acquisition costs, and infrastructure and transactional costs associated therewith, the Board determines that an appropriate Water Acquisition Fee, or "in-lieu-of" fee at the present time is \$10,500 per annual single family equivalent ("SFE"), based upon current water demand requirements of the Town at 0.5 acre feet per SFE. By way of example, were a developer to have 100 acre feet of adjudicated nontributary supply, and were the scope of requested development to result in 120 annual acre feet of demand based upon anticipated development of 240 SFE's, such development would be short 35 annual acre feet of supply, equivalent to 70 SFE's (85% of nontributary Denver Basin supply being considered as sufficient, pursuant to Paragraph 1.C.2., above). Such developer could therefore provide the District with payment of \$735,000 in Water Acquisition Fees (70 SFE x \$10,500), and the District would then be prepared to issue the "will serve" letter necessary for approval of land use planning applications at the Town of Monument.

3. In the District's sole discretion, all Water Acquisition Fees collected by the District may be utilized as follows:

A. Purchase, lease, or other acquisition of physical and legal water supplies for use in the District's water system. Such acquisitions may include nontributary and nontributary Denver Basin supplies, other groundwater supplies, as well as renewable surface water supplies. Such acquisitions may be made by the District, or in cooperative efforts with other municipal or quasi-municipal entities.

B. Purchase, design, construction, maintenance and repair of facilities necessary for the delivery, treatment and use of physically and legally available water supplies to the District's water system, specifically including, but not limited to, such acquired water supplies as describe in Paragraph 3.A., above, and specifically including storage for any such water supplies.

C. Purchase, design, construction, maintenance and repair of any facilities or systems necessary for the use and re-use of any and all water supplies available to the District to the fullest extent allowable by law, for maximization of beneficial uses of all such water supplies.

D. Any other lawful purpose associated with the District's operation of its utility enterprise.

4. Determination by the Board. It is the Board's determination that this policy and the fees discussed herein are reasonably related to the overall existing and future costs of operations and capital improvements for the water services provided by the


District, are necessary for the District to provide a reliable water supply and to recover costs associated therewith, and plan for future expense, and are uniformly made to apply to all of the District's customers.

5. Other Rates and Fees. All other policies and fee regulations of the District not expressly revised by this Resolution shall remain in full force and effect.


6. Enterprise. This Resolution is taken by the District, including as acting through its utility enterprise.

7. Proper Action. This action is taken by the Board at its regular public meeting after all required public notices and postings of the meeting have been made, with a quorum of the Board in attendance and taking proper action thereon.

THEREFORE, the above policy regarding provision of sufficient water supply to the District prior to issuance of "will serve" letters as may from time to time be requested by the Town, and policy regarding associated Water Acquisition Fees, were established as rules and regulations of the District, and were enacted by the Board of Directors of the District on this 18 day of AUGUST, 2020, to be effective immediately.



Mark Melville, District President

ATTEST:


Marco Fiorito, District Vice President