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NEWS

Fort Collins loses long-held Poudre water right through paperwork error

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Published 6:23 p.m. MT Jan. 9, 2014 | Updated 9:51 p.m. MT Jan. 9, 2014

Failure to file required paperwork has cost Fort Collins a water right on the Poudre River it has held for 28 years.

The right was intended to help fill Halligan Reservoir, which sits on the North Fork of the Poudre River, if a project to enlarge the reservoir is ever approved and built.

The city has been working on the enlargement proposal for many years. It secured a conditional right to receive up to 33,462 acre-feet of water in 1985 in hopes of storing part of it in Halligan to meet future water needs and protect the city's water supply during times of drought.

Conditional water rights determine how much of available water users receive each year and must be renewed every six years. A notice from the state Water Court that the city needed to document its diligence in pursuing the reservoir expansion project and file an application to keep the right by the end of November went unanswered, officials said.

Under state law, the court cannot and will not give second chances. The city's conditional right was canceled Dec. 2.

How the notice from the state was handled and why a response was not filed is still under investigation, said Donnie Dustin, water resources manager for Fort Collins Utilities.

"It was an unintended oversight. ... There was a communications breakdown in this office," he said.

City officials are still trying to sort out the roles members of the utilities department, the city attorney's office and outside lawyers retained by the city to work on water issues should have followed to maintain the right, said Lisa Rosintoski, customer connections

manager for utilities.

The possible financial and legal consequences of losing the right have not yet been determined, said Brian Janonis, executive director of Fort Collins Utilities.

Still on course

Losing the water right is not expected to affect the reservoir expansion project, which has been going through an Environmental Impact Statement, or EIS, process since 2005. The process is mandated by federal environmental law and is being done under the direction of the Army Corps of Engineers.

The proposed expansion would increase the capacity of the reservoir from about 6,500 acre feet to 21,000. An acre foot of water is enough to meet the needs of two or three urban families for a year.

Originally, plans called for expanding the capacity to 40,000 acre feet, but that changed when three water districts withdrew as partners from the project in 2009 over concerns about its mounting costs.

The size of the project could be changed depending on the outcome of the EIS process, Dustin said. So far \$7.1 million has been spent on the EIS, with the city kicking in \$3.7 million.

The city has sufficient senior water rights to fill an expanded Halligan Reservoir about 92 percent under the right conditions, Dustin said.

“We have other water rights that we can store at the reservoir that actually, at least in our initial assessment, shouldn’t impact the size of the reservoir that we need,” he said.

Colorado law sets a priority system for the distribution of water based on the date a right is established. The earliest claims on Poudre River water, including some held by the city, date to 1861.

The right established in 1985 was considered to be “junior” and unlikely to be available except during wet years, Dustin said. The city reapplied for the right after it was canceled and received a tentative 2013 priority date.

Setting the priority still requires a court process. A water right is considered conditional until it is used, Dustin said, at which time it can be made “absolute” by the court.

Colorado's systems for distributing water to the holders of rights is like a soup line, Dustin said.

"People have different-sized bowls, you get in line, people who get there first get their bowls filled up until they are out of soup," he said. That means holders of a right secured in 2013 are likely to receive less water than those holding a more senior right.

Precipitation that falls in a given year determines how much water is available for distribution and when the various rights on it come into play depending on priority.

Based on modeling, the Halligan right might have produced about 4,000 acre feet in a wet year, Dustin said. Of that, perhaps 500 to 600 acre feet would have gone into the reservoir.

Fort Collins has enough senior water rights to meet its supply needs, he said. Additional water is needed to back up the supply in case of emergencies.

The North Poudre Irrigation Co. is a partner with city in the expansion project. The company expects to continue working on the project and the permitting process, said general manager Scott Hummer.

The change in the priority date for the right is not likely to be significant, he said. Work on the project is considered "status quo" by the irrigation company.

"At first blush, this does not seem to be horrendous for our company," Hummer said.

The EIS for the Halligan expansion also covers a proposal by the city of Greeley to expand Seaman Reservoir along the North Fork of the Poudre. Greeley proposed expanding the capacity of its reservoir from 5,000 acre feet to about 53,000.

Fort Collins' problem with its right has no effect on Greeley's proposal, said project manager Nancy Koch.

It also has no impact on the EIS process, said Rena Brand, a regulatory specialist with the Army Corps of Engineers, which is conducting the study.

A draft EIS for the Halligan-Seaman project is scheduled to be released in fall 2015.

Good supply

The city's water supply is solid, Janonis said, even without the right for Halligan. More important than the right is having a reservoir to store the water the city already has

absolute rights to.

Being able to “carry over” water from year to year is critical for the security of the city’s supplies, he said.

Fort Collins gets about half of its water from Horsetooth Reservoir and the Colorado Big-Thompson project. The rest comes from rights on the Poudre River.

The city owns one storage facility — Joe Wright Reservoir in Poudre Canyon — that holds about 6,500 acre feet of water.

“There is a difference between Halligan the ‘bucket’ and Halligan the water,” Janonis said. “We really need the bucket; it doesn’t matter if it’s Halligan or an alternative that the Corps comes up with, we need a place to keep the water.”

By the numbers

For the Halligan Reservoir expansion project:

? **6,500 acre feet:** current capacity of the reservoir

? **40,000 acre feet:** original proposed expanded capacity

? **21,000 acre feet:** current projected expanded capacity

? **\$49 million:** projected cost of the expansion project

? **\$30 million:** Fort Collins’ share of the project

Timeline

? **1985:** Fort Collins establishes a conditional water right for an expansion of Halligan Reservoir

? **1987:** The city acquires an interest in the expansion

? **1993:** The city enters into an option agreement with North Poudre Irrigation Co. to buy and enlarge the reservoir

? **2003:** The city exercises its option and other partners join the project

? **2004:** Fort Collins and Greeley form the Halligan-Seaman Water Management Project

? **2005:** An Environmental Impact Statement process begins on the project

? **2009:** Three water districts leave the project over concerns about mounting costs

? **2013:** The conditional water right from 1985 is canceled by the state Water Court