



William J. "Mickey" Conway, District Manager

October 20, 2020

Ms. Jenny Axmacher, AICP
City Planner
Commerce City Planning Department
7887 East 60th Avenue
Commerce City, CO 80022

Re: Metro Wastewater Reclamation District
Second Creek Interceptor and Sand Creek Interceptor System Improvements Project
City of Commerce City Conditional Use Permit Application; Case Number CU-123-19
Resubmittal No. 5: FRICO Canal Crossing Update

Dear Ms. Axmacher:

At the City of Commerce City (City) City Council Hearing on September 21, 2020, the Metro Wastewater Reclamation District (Metro District or District) presented an overview of the Application for a Conditional Use Permit (CUP Application) and associated informational report (Report) for its Second Creek Interceptor and Sand Creek Interceptor System Improvements Project. The Council voted to continue the case until after the Metro District and the Farmers Reservoir and Irrigation Company (FRICO) conclude negotiations for the Little Burlington Ditch and O'Brian Canal crossings. The District and FRICO have reached an agreement to perform both crossings via open cut methods as requested by FRICO at the City Council Hearing. The executed agreements between the two parties are attached as Exhibit A to this letter.

This letter serves as Resubmittal No. 5 to the CUP Application to update the transportation crossing summary to reflect an open cut crossing of East 112th Avenue and modifies the requested work hours to meet canal operational and applicable agency environmental schedule restrictions in the area of East 112th Avenue and the O'Brian Canal. In addition, this letter provides a summary of the anticipated design and construction schedule associated with the open cut crossings of the Little Burlington Ditch and O'Brian Canal.

Little Burlington Ditch Crossing

Historically, the Little Burlington Ditch is offline each year approximately between the months of November to March. As a part of the Metro District's easement agreement with FRICO, the open cut crossing of the ditch will take place between November 1 and March 15, while it is out of service. The District will provide notice as to the year in which they will cross the ditch, and FRICO will respond to the District by August 1 of the crossing year outlining the acceptable construction period. This work is currently planned for 2021, but provisions exist to delay the crossing until future years should circumstances change. The casing for the Second Creek Interceptor will be installed via open cut construction across the ditch during this period in accordance with the

agreement. The Second Creek Interceptor pipe material, alignment, as well as construction equipment needed to install the interceptor remain the same as originally submitted in CUP Resubmittal 2 dated May 15, 2020.

East 112th Avenue and the O'Brian Canal Crossing

The O'Brian Canal does not have a seasonal shutdown period similar to the Little Burlington Ditch. This canal often operates year-round depending on FRICO stakeholders' water needs and climate conditions. The agreement between the Metro District and FRICO states that both parties will work to construct the crossing while the canal is offline. As an alternative, a temporary bypass channel can be constructed to convey smaller winter flows around the primary canal while the casing for the Second Creek Interceptor is installed. A figure showing the conceptual temporary bypass channel for this alternative is attached as Exhibit B. The District and FRICO identified the following construction schedule constraints associated with both alternatives:

- Shutdowns or historical low flows in the O'Brian Canal occur in the month of November each year and would be the ideal time for the crossing to limit risk to both parties.
- Human encroachment restrictions associated with potential nesting raptors in the area are stipulated by Colorado Parks and Wildlife (CPW) and are effective from December 1st through August 14th of the following year.

The Second Creek Interceptor depth will be approximately 17 feet at the centerline of the East 112th Avenue road crossing. Shoring will be used to limit the trench width to approximately 40 feet in the road right-of-way. A temporary work area width of 100 feet will be required to provide construction personnel and equipment access on both sides of the trench. A two-step construction approach is anticipated. First, the open cut casing will be constructed across the canal, which requires approximately a six week closure of East 112th Avenue and detour around the work area (anticipated mid-October to late November 2021). Second, the interceptor piping will be installed through the casing, which will require about a four week closure of East 112th Avenue (anticipated in the fall of 2022). All road closures, traffic control plans and detours will be coordinated with City Public Works and Engineering departments. After construction, East 112th Avenue will be restored to pre-construction grades with in-kind surface materials. The Second Creek Interceptor pipe material, alignment, as well as construction equipment needed to install the interceptor remain the same as originally submitted in CUP Resubmittal 2 dated May 15, 2020. The following sections provide additional details associated with the design, construction, and schedule for the two alternatives associated with crossing the O'Brian Canal.

The Metro District's and FRICO's preferred construction method for the Second Creek Interceptor crossing of East 112th Avenue and the O'Brian Canal is open cut while the canal is offline. Per the easement agreement between the District and FRICO, by May 1, 2021, the District shall specify a 30-day construction window to install the crossing between October 15, 2021 and December 3, 2021. By September 1, 2021, FRICO will notify the District of the expected flow conditions during the construction window, which will determine crossing approach.

- *Open Cut Construction with the Canal Offline (Preferred Approach)*. If FRICO indicates that the flow will be terminated, an open cut crossing of the canal will occur without a bypass channel during the construction window. The District's contractor estimates installation of the casing pipe and restoration of the canal will take approximately three to four weeks, assuming two shifts per day. The planned schedule will allow the project to comply with CPW's December 1 human encroachment restriction, to avoid impacts to potential nesting raptors. The installation of the Second Creek Interceptor through the casing and to the south of the crossing will take place in fall of 2022 before CPW's December 1 human encroachment restriction. The temporary working area for the open cut casing has been negotiated with FRICO in the agreement. No additional parcels other than those previously identified in the District's CUP application are impacted with this scenario.
- *Open Cut Construction with a Canal Bypass Channel (Alternative Approach)*. If FRICO cannot commit complete termination of flows during the construction window, a temporary canal bypass will be utilized to convey winter flows around the work area as depicted in Exhibit B. The alternative scenario in the agreement allows for the bypass to be constructed prior to the construction window, with two 2-day canal outages to complete the work. The first outage will allow the District's contractor to connect the temporary bypass channel to the canal on each side of the crossing. The second canal outage will allow for removal of the temporary bypass channel connections to the canal. Restoration of grades and removal of the bypass can occur outside of the construction window to accommodate CPW human encroachment restrictions. The installation of the open cut casing pipe under the canal will proceed in a similar manner as the preferred approach. The schedule duration for the alternative approach is approximately the same with the exception of additional time to prepare the bypass prior to the construction window.

Design for the alternative bypass channel is in progress by the Metro District's Design Engineer. The temporary bypass channel is planned to be plastic or membrane lined to limit water loss and erosion. Since the alternative bypass channel is not yet designed and is only conceptual at this time, the District will provide design plans to City staff for review by January 31, 2021. Based on discussions with City staff, the District understands CUP provisions allow for this design review to take place at a later date. In addition to construction plans, storm water management plans and specifications will also be submitted to City Engineering for review. Temporary working area for the open cut casing has been negotiated with FRICO in the Exhibit A agreement. Additionally, temporary work area for the bypass channel has been coordinated with the property owner to the north, DIBC Buffalo Hills Ranch LLC. The District has confirmed that the bypass channel is not impacting DBIC Buffalo Hills Ranch's construction plans for the Reunion Village 8 development, East 112th Avenue realignment, and the Turnberry development to the west.

Updated Working Hours

As a part of Resubmittal 2 of the CUP Application dated May 15, 2020, the Metro District requested a variance for construction work hours for the Second Creek Interceptor. The

requested work hours are 7:00 A.M. to 7:00 P.M., Monday through Saturday, except public holidays. Construction work hours for the Second Creek Interceptor will vary based on activity and season, but will generally occur during these hours. Resubmittal 2 also stated that if work needs to occur outside of the proposed hours, the District will request approval from the City. As a part of this Resubmittal 5, the District is requesting an extension of the work hours for the work associated with the O'Brian Canal crossing to accommodate the schedule restrictions identified above. The open cut casing installation will require the District's contractor to work 24 hours a day, 7 days a week (2 shifts per day) for about one month (approximately November 1, 2021 through November 30, 2021) to meet the conditions in the agreement and applicable agency environmental schedule restrictions.

Updated Transportation Crossings

Below is an updated version of Table 4-1 from the CUP Resubmittal 4 dated August 20, 2020, with the anticipated construction method for the Second Creek Interceptor transportation crossings. The anticipated crossing of East 112th Avenue changed from "tunnel or open cut" to "open cut" in accordance with the FRICO agreement. All remaining information in the table is as presented in Resubmittal 4.

Table 4-1: Anticipated Transportation Crossings in Commerce City

Road/Railroad	Jurisdiction	Construction Method	Section	Town	Range	Min. Depth of Cover (feet)
East 96th Avenue	Commerce City	Tunnel	16, 17, 20, 21	2S	66W	5
East 112th Avenue	Commerce City	Open Cut	7	2S	66W	5
East 104th Avenue	Commerce City	Tunnel	8, 17	2S	66W	5
East 120th Avenue	Commerce City	Tunnel	1	2S	67W	5
Chambers Road	Commerce City	Tunnel	7, 8	2S	66W	5
East 88th Avenue	Commerce City	Open Cut	21, 28	2S	66W	5
Tower Road	Commerce City	Tunnel	27, 28	2S	66W	5
East 81st Avenue	Commerce City	Open Cut	28	2S	66W	5
US Highway 6/ BNSF Railroad	BNSF	Tunnel	12	3S	68W	5
N-Line	RTD ¹	Tunnel	36	2S	66W	5

Note:

¹ RTD = Regional Transportation District

The Metro District appreciates the opportunity to update the City of Commerce City on the successful negotiations and agreement with FRICO for the Little Burlington Ditch and O'Brian Canal crossings. It is the District's understanding that Resubmittal No. 5 will provide supporting

Ms. Jenny Axmacher – City of Commerce City
Second Creek Interceptor; Resubmittal 5-FRICO Canal Crossing Update
October 20, 2020 – Page 5

materials for the City Council Hearing on November 2, 2020, at which the CUP and 1041 Intergovernmental Agreement will be presented for the Council's consideration. If you have any questions or the City would like further clarification, please contact Renee Paplow at 303.929.9270 or rpaplow@mwr.dst.co.us.

Yours truly,



Jon Wicke, P.E.
Senior Engineer, Project Manager

cc: Ashley Bradney, Mike Gossett, Steve Pool – HDR
Ed Itell, Nathan Worker – Jacobs
Jim Mallore, Kelley Merritt, Renee Paplow, Craig Simmonds – Metro District



William J. "Mickey" Conway, District Manager

September 9, 2020

Ms. Jenny Axmacher, AICP
City Planner
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7887 East 60th Avenue
Commerce City, CO 80022

Re: Metro Wastewater Reclamation District
Second Creek Interceptor and Sand Creek Interceptor System Improvements Project
City of Commerce City Conditional Use Permit Application; Case Number CU-123-19
September 21, 2020 City Council Hearing – Supplemental Information Submittal

Dear Ms. Axmacher:

At the City of Commerce City (City) Planning Commission Hearing (Hearing) on August 4, 2020, the Metro Wastewater Reclamation District (Metro District or District) presented an overview of the Application for a Conditional Use Permit (CUP Application) and associated informational report (Report) for its Second Creek Interceptor and Sand Creek Interceptor System Improvements Project. At the Hearing, Public comment was received from Mr. Todd Messenger of Fairfield and Woods P.C. on behalf of the Farmers Reservoir and Irrigation Company (FRICO) and Burlington Ditch, Reservoir and Land Company (Burlington). Mr. Messenger's comments were supported by correspondence dated August 4, 2020 (from Fairfield and Woods P.C.) regarding impacts to ditches and canals. This letter serves as the District's response to this public comment, and specifically addresses the four proposed conditions (S-V) included in the associated August 4, 2020 correspondence. To provide additional information and clarification on the comments outlined in the August 4, 2020 correspondence, the District requests the City's consideration to include the following responses in the packet for the September 21, 2020 City Council Hearing.

S. Prior to construction within the FRICO or Burlington right-of-way, the permit holder shall negotiate in good faith and enter into crossing agreements with FRICO and Burlington that are reasonably acceptable to FRICO and Burlington.

Metro District Response: The District has participated in good faith negotiations with FRICO and all other property owners within Commerce City over the last two years. The District and FRICO executed a Non-exclusive Easement and License and Access Agreement to cross the Little Burlington Ditch and are in negotiations for an agreement to cross FRICO's O'Brian Canal. Given the parties' willingness and ability to settle on the Little Burlington Ditch crossing, the District is optimistic that the parties will also be able to resolve the O'Brian Canal crossing. The project schedule commences construction this fall. To stay on schedule, the District filed a lawsuit for

possession of a non-exclusive easement to cross the O'Brian Canal earlier this fall pursuant to its power of Eminent Domain to stay on schedule to deliver this important public project. This does not foreclose continued negotiations, as evidenced by the Little Burlington Ditch settlements, and the District is committed to continuing on a parallel settlement path with the hope that a hearing for possession of a non-exclusive easement is not necessary. Nevertheless, as explained in the District response to "V" below, the General Assembly has provided the District the statutory right to exercise Eminent Domain powers, so the District cannot be required to enter into a crossing agreement which would supplant its statutory authority.

T. The permit holder shall design and construct the crossings of the Little Burlington Canal and the O'Brian Canal according to FRICO's design criteria manual, including standards applicable to open-cut installation of pipelines.

Metro District Response: The District requested FRICO's design materials and has only received standards from FRICO for an open-cut crossing of their canals. (Note: Per the parties' agreement mentioned in "S" above, the District's crossing of the Little Burlington Canal will be by open-cut methods and will be designed consistent with FRICO open-cut design documents.) The District has not received standards from FRICO for a tunneled crossing. Absent the parties reaching an agreement that allows the District to cross the O'Brian Canal via open-cut, the District will continue to seek to obtain a non-exclusive easement under its power of eminent domain that will allow for installation of the pipeline through a tunneled approach. Under this scenario, absent FRICO providing its tunnel design document to the District, the District will design and construct such tunnel crossing using best engineering practices. If FRICO provides its design standards for a tunnel crossing to the District, the District would be more than willing to review and incorporate them into the project where possible, noting that this would have been much easier if FRICO had provided these documents at the beginning of the project as the District requested.

U. The permit holder shall coordinate with FRICO and Burlington regarding the timing of open cut installation, so that the installation occurs during times when the ditch is turned off for planned maintenance.

Metro District Response: If Metro and FRICO/Burlington are able to reach agreement on an open cut solution to crossing the O'Brian Canal, a schedule for crossing the Canal will be part of the agreement. Notably, FRICO has communicated that they may not be able to turn off flow in the O'Brian Canal to accommodate an open cut construction approach, so it is unclear whether an open cut approach will be a technically viable option; nevertheless the District is committed to continuing settlement discussions. Ideally, FRICO will agree to turn off flow in the O'Brian Canal for a reasonable amount of time, as they suggested in this condition "U", which will accommodate construction of the District's project. If the parties are not able to settle and Metro obtains possession of a permanent easement through its power of eminent domain, then the crossing will be by means of a tunnel so the flow in the O'Brian Canal will not be affected by construction.

V. The requirements of Conditions S., T., and U., above, are regulatory requirements that shall not be waived in the event that the permit holder acquires crossing rights by eminent domain.

Metro District Response: Public projects cannot be stopped because one landowner is not agreeable to the terms being offered. The power to condemn property is in the public interest so the health and safety of the public can be protected, which is why the General Assembly has provided metropolitan sewage disposal districts, such as the District, the authority to exercise eminent domain powers. The District's statutory right to condemn property is necessary for its public projects and this power cannot be altered or conditioned by FRICO or Burlington. If an agreement cannot be reached in a timely manner, and if condemnation is necessary, the District will comply (or has already complied) with the many requirements of eminent domain law. However, conditions S, T and U improperly attempt to condition the District's eminent domain authority and threaten to unnecessarily delay the project. While the District is committed to working with FRICO and Burlington, it must maintain control of its project design, construction and timing.

The Metro District appreciates the opportunity to address public comments from the Hearing with this supplemental information. The District requests that this information be included in the packet for the City Council Hearing on September 21, 2020 at which the CUP and 1041 Intergovernmental Agreement will be presented for the Council's consideration. If you have any questions or the City would like further clarification, please contact Renee Paplow at 303.929.9270 or rpaplow@mwr.dst.co.us.

Yours truly,



Jon Wicke, P.E.
Senior Engineer, Project Manager

c: Jim Mallore, Kelley Merritt, Renee Paplow, Craig Simmonds – Metro District
Ashley Bradney, Mike Gossett, Steve Pool – HDR
Ed Itell, Nathan Worker – Jacobs



William J. "Mickey" Conway, District Manager

August 20, 2020

Ms. Jenny Axmacher, AICP
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Re: Metro Wastewater Reclamation District
Second Creek Interceptor and Sand Creek Interceptor System Improvements Project
City of Commerce City Conditional Use Permit Application; Case Number CU-123-19
Resubmittal No. 4: Transportation Crossings Update

Dear Ms. Axmacher:

At the City of Commerce City (City) Planning Commission Hearing on August 4, 2020, the Metro Wastewater Reclamation District (Metro District or District) presented an overview of the Application for a Conditional Use Permit (CUP Application) and associated informational report (Report) for its Second Creek Interceptor and Sand Creek Interceptor System Improvements Project. The Metro District presented tunneling as the preferred construction method for the Second Creek Interceptor crossing of Chambers Road. The CUP Application previously presented this crossing as open cut and included an alternative for tunneling that was being investigated. The findings of the investigation determined a tunneling approach for the crossing appears feasible and further limits impacts to the roadway. This letter serves as Resubmittal No. 4 to the CUP Application and identifies that the tunneling method is the District's preferred approach for the Chambers Road crossing with open cut as the alternative approach. In addition, the construction method for East 112th Avenue was updated.

Preferred Approach: Tunneling of Chambers Road Crossing

The Metro District's preferred construction method for the Second Creek Interceptor crossing of Chambers Road is tunneling. The tunnel will be a diagonal crossing approximately 218 feet in length that will accommodate installation of the 48-inch diameter Second Creek Interceptor inside of a 66-inch diameter steel casing pipe. The casing pipe depth will be approximately 22 feet at the road centerline of the crossing. Staging areas for construction equipment and materials will be required at both ends of the tunneled segment for shafts. Although traffic impacts are not anticipated, minor diversions to protect workers on the shoulder of the road may be required as well as roadway surveying for utility monitoring. The Chambers Road pavement located directly above the tunnel will be monitored via visual observation and survey activities during construction to confirm tunneling operations are not negatively impacting the road surface.

Alternative Approach: Open Cut of Chambers Road Crossing

The Metro District's alternative construction method for the Second Creek Interceptor crossing of Chambers Road is conventional open cut along the same alignment as the preferred tunneled crossing. The interceptor depth will be approximately 20 feet at the road centerline of the crossing. Shoring will be used to limit the trench width to approximately 20 feet in the road right-of-way. A temporary work area width of 60 feet will be required to provide construction personnel and equipment access on both sides of the trench. The open cut approach will require temporary closure of Chambers Road and the construction of a bypass road (shoo-fly) around the work area to maintain traffic flow and provide emergency access. The bypass will be constructed of asphalt, will maintain traffic in both directions throughout construction, and will avoid a full closure of Chambers Road. The open-cut method will be used if subgrade conditions encountered during tunneling render tunneling infeasible or create an unsafe work environment for construction personnel.

Updated Transportation Crossings

Below is an updated version of Table 4-1 from the CUP Resubmittal 2 dated May 2020 with the anticipated construction method for the Second Creek Interceptor transportation crossings. The anticipated crossing of Chambers Road changed from open cut to the preferred tunneling approach. All remaining information in the table is as presented in Resubmittal 2 with the exception of the construction method for East 112th Avenue, which changed to "Tunnel or Open Cut".

Table 4-1: Anticipated Transportation Crossings in Commerce City

Road/Railroad	Jurisdiction	Construction Method	Section	Town	Range	Min. Depth of Cover (feet)
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Note:

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Ms. Jenny Axmacher – City of Commerce City
Second Creek Interceptor; Transportation Crossings Update
August 20, 2020 – Page 3

The Metro District appreciates the opportunity to confirm the method of construction for transportation crossings associated with the Second Creek Interceptor. It is the District's understanding that Resubmittal No. 4 will be included in the packet for the City Council Hearing on September 21, 2020 at which the CUP and 1041 Intergovernmental Agreement will be presented for the Council's consideration. If you have any questions or the City would like further clarification, please contact Renee Paplow at 303.929.9270 or rpaplow@mwr.dst.co.us.

Yours truly,



Jon Wicke, P.E.
Senior Engineer, Project Manager

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Ashley Bradney, Mike Gossett, Steve Pool – HDR
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William J. "Mickey" Conway, District Manager

June 25, 2020

Ms. Jenny Axmacher, AICP
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Commerce City, CO 80022

Re: Metro Wastewater Reclamation District
Second Creek Interceptor and Sand Creek Interceptor System Improvements Project
City of Commerce City Conditional Use Permit Application; Case Number CU-123-19
Resubmittal No. 3

Dear Ms. Axmacher:

In May 2019, the Metro Wastewater Reclamation District (Metro District or District) submitted to the City of Commerce City (City) an Application for a Conditional Use Permit (CUP Application) and associated informational report (Report) for its Second Creek Interceptor and Sand Creek Interceptor System Improvements Project (Project). On October 11, 2019, the City provided comments to the Metro District on the CUP Application and Report. The District submitted responses to these comments (Resubmittal No. 1) to the City, referral agencies, and interested parties on December 18, 2019. On January 27, 2020 the City provided comments to the District on Resubmittal No. 1 of the CUP Application and Report. The District submitted responses to these comments (Resubmittal No. 2) to the City on May 15, 2020. On June 22, 2020, the City provided comments to the Metro District on Resubmittal No. 2.

City staff has deemed the CUP application complete and responses included in Resubmittal 2 adequate. On June 22, 2020, the following comment was provided by the City to the Metro District on behalf of the South Adams County Fire Department. The District's response is listed below.

1. **Comment from the South Adams County Fire Department (June 15, 2020):** South Adams County Fire Department requires that while construction is being completed on Chambers Road north of East 104th Avenue, emergency access from Chambers Road to the developments to the east and west shall always be maintained and available for emergency responders to access, at all times.
 - a. **Metro District Response:** Emergency access for the Second Creek Interceptor crossing of Chambers Road will be maintained through the use of a bypass road (shoo-fly) around the construction area. The bypass will be constructed of asphalt, will maintain traffic in both directions throughout construction and will avoid a full closure of Chambers Road. The bypass road is planned to extend from the King Sooper's eastern parking entrance to the north approximately 1,000 ft. Emergency access to the developments, including the active commercial construction to the east and the existing businesses to the west, will be available at all times by emergency vehicles. The Metro District may also utilize trenchless construction for this crossing which would maintain current traffic flow conditions.

The Metro District appreciates the City's coordination on scheduling the Planning Commission and City Council public hearings. As discussed, the Conditions of Approval for the CUP and the 1041 IGA will be approved by the Metro District Board of Directors after the Planning Commission hearing and prior to the City Council Hearing at the tentative dates shown below:

- Planning Commission Public Hearing: August 4, 2020 (CUP)
- Metro District Board of Directors: August 18, 2020 (CUP and 1041 IGA)
- City Council Public Hearing: September 21, 2020 (CUP and 1041 IGA)
- City Council Public Hearing (Second Reading): TBD-October, 2020 (1041 IGA)

The Metro District is committed to continuing to work closely with the City, referral agencies, and community as the Project moves forward. If you have any questions regarding the District's response or the City would like further clarification, please contact Renee Paplow at 303.929.9270 or rpaplow@mwrddst.co.us.

Yours truly,



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Senior Engineer, Project Manager

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