

ORDINANCE NO. 733-17

AN ORDINANCE ESTABLISHING A WATER AUGMENTATION FEE

WHEREAS under Colorado law all tributary ground water pumped and depleted must be returned to the surface water system; and

WHEREAS, Fowler is located in the Arkansas River basin and depleted water must be returned to the Arkansas River; and

WHEREAS, water returned to the Arkansas River to augment or replace depleted water is referred to as augmentation water; and

WHEREAS, the augmentation water used by the town of Fowler is ordinarily Fryngpan-Arkansas Project water obtained through Bureau of Reclamation facilities and/or is stored in the Pueblo Reservoir, a Bureau of Reclamation facility; and

WHEREAS, the Bureau of Reclamation has adopted PEC TRMR-63 “Use of Reclamation Water or Facilities for Activities Prohibited by the Controlled Substances Act of 1970” (“Bureau Policy”); and

WHEREAS, the Bureau Policy provides that the Bureau will not approve or make available water that will be used in the cultivation of marijuana defined as follows:

“The term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.”

21 U.S.C.802(16); and

WHEREAS, this definition includes all forms of marijuana including medical marijuana, recreational marijuana and hemp; and

WHEREAS, augmentation water from sources other than project water is much more expensive than project water.

BE IT ORDAINED by the Board of Trustees of the Town of Fowler as follows.

1. Definitions.

- a. Marijuana in this ordinance means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or

preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

2. A water augmentation fee is hereby established.
3. The water augmentation fee shall be assessed on all water that passes through a water meter for potable or non-potable water at a premises where the town reasonably believes marijuana, as defined above, is being cultivated or grown and shall be in addition to all other rents, fees and charges assessed to Town of Fowler potable water and non-potable water customers.
4. Where marijuana cultivation exists, the town shall install a meter pit and a water meter to meter all non-potable water use at the premises owner's sole cost including all materials, labor and equipment use.
5. The Board of Trustees shall set the fee amount from time to time in an amount sufficient to recover the town's cost to purchase augmentation water that is compliant with Bureau of Reclamation policy PEC TRMR-63 as amended from time to time plus the town's estimated administration cost.
6. A person growing marijuana legally under the laws of the state of Colorado may avoid the augmentation fee by purchasing augmentation water compliant with Bureau of Reclamation policy PEC TRMR-63 as amended from time to time in an amount at least as great as that person's use of water at the premises and providing that water to the town of Fowler through the Colorado Water Protection and Development Association ("CWPDA") in a manner calculated to allow the town's use of the water for augmentation.
7. If the town is unable to purchase augmentation water compliant with Bureau of Reclamation policy PEC TRMR-63 as amended from time to time, the town shall notify all known marijuana cultivators. Marijuana cultivators must then provide the town with compliant augmentation water as described above or cease using town of Fowler water for the cultivation of marijuana.
8. The initial augmentation fee shall be \$3.98 per 1,000 gallons of potable or non-potable water that passes through the meter.
9. **Conflicts.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed or amended to the extent necessary to conform with this ordinance.
10. **Severability.** If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any Court, such decision shall not affect the validity of the remaining portions of this ordinance.

INTRODUCED, READ IN FULL, PASSED, ADOPTED AND ORDERED
PUBLISHED THIS 14th DAY OF AUGUST, 2017.

Charles R. Hitchcock, Mayor

ATTEST:

Kelly Lotrich, Town Clerk