

Frequently Asked Questions about the City of Aspen's Conditional Water Storage Rights

1. What is the feedback from the public and stakeholders to City Council about this decision?

The City received a wide spectrum of feedback from the public and stakeholders. Feedback from 15 stakeholders (local and national water managers and environmental groups) ranged from support of the City's conditional water storage rights to requests to relinquish them. Likewise, 40-plus members of the public attended a public meeting and shared a broad spectrum of feedback, with some members of the public strongly stating that the City should retain its conditional water storage rights in light of uncertain climate and water futures, while others felt strongly that the City should not have an option to propose dams in the future for environmental reasons. The City also received 50-plus emails from the public in opposition to completing its diligence filing in October, largely for environmental reasons. Media about this project has focused largely on the public's emails to the City. However, with respect to the many citizens that attended the public open house and the stakeholder meetings, it must be noted that the spectrum of feedback on the City's decision was very broad and complex, ranging from retention to relinquishment of the conditional water storage rights.

2. The City of Aspen hasn't needed a reservoir for water storage in the past. Why might the community need a reservoir or water storage of some type as an option 50 years from now?

It is well-known that the City of Aspen does not have any current water storage – meaning the community is living “paycheck to paycheck” with snowpack and snowmelt as the main water sources for everyone's use. The City is protecting its ability to construct traditional storage, and to develop its conditional water rights to ensure the City of Aspen can meet the demands of the community and the environment for future generations.

Climate change has already driven up temperatures in the Western US, and models show Aspen can expect a 6 degree Fahrenheit increase by 2050. Although these models show a high variability in future precipitation, they do indicate that more precipitation will come to Aspen in the form of rain, instead of snow. We are currently seeing higher temperatures and fewer frost-freeze days in the Valley, which are leading to changes in water need and use patterns. These changing climate conditions continue to add vulnerability to Aspen's water system and show that water storage is an increasing need in Aspen to ensure a secure water system for future years.

Based on population trends, including increasing summer populations, we also anticipate that people will spend more time in Aspen throughout the year, which will require more water for

their commercial, personal, and recreational uses, increasing the overall amount of water demanded by the community.

For these reasons, the City would like to retain its storage options, recognizing that if these conditional storage rights are relinquished, Aspen has no other meaningful water storage rights, should storage be needed in the future.

3. What does the “can and will” clause mean with respect to conditional water storage rights?

Colorado water law for conditional water rights contains a phrase “can and will”. This means that the City of Aspen must demonstrate that it “can and will” divert water under the conditional storage rights and place it to “beneficial use” within a reasonable time. “Beneficial use” includes municipal uses, which encompass the many water needs served by Aspen’s municipal water supply. “Reasonable time” depends on the circumstances of each situation; there is not a defined period of time as each situation can be very complex. Every six years, one who holds a conditional water right (in this case, the City of Aspen) must show the water court that it is proceeding with reasonable diligence to develop the conditional water rights. This may include showing work done on Aspen’s overall water supply system, which integrates a number of different structures and sources of supply, and site-specific work, such as research, studies, permitting, planning or designing of infrastructure specifically required for the conditional water right itself.

The requirement to demonstrate “can and will” is a requirement of maintaining a conditional water right – a right that has not yet been put to beneficial use. This is different from the concept of “use it or lose it,” which is used to broadly describe limitations on absolute water rights. Absolute rights, unlike conditional water rights, have been developed and put to beneficial use. Over time, however, some or all of an absolute water right may be lost if it is not utilized to its full decreed extent. The term “abandonment” is applied to the loss of some or all of an absolute water right.

4. Does the City of Aspen want to store water to keep lawns green?

We take conservation very seriously and to that end have adopted tiered rates, programs to assist commercial and residential customers use less water, and we’re currently working on a landscape ordinance to further promote efficiency.

The City received some letters from citizens who thought the City wants the ability to store water so that “people can water their lawns” or expressed similar sentiments indicating that the City wants to build the reservoirs so that people can use water extravagantly. In fact, the primary reason the City wants to protect its conditional water storage rights is to ensure that

these storage options remain available as a tool to help the City prepare for and respond to uncertain futures in climate, water supply, and population demand.

In addition to supplying for the water needs of Aspen's residents, businesses and visitors, the City also provides municipal water for multiple public amenities including open space, recreation, our urban forest, and historic ditches. Our community's high regard for this area's beauty and resilience were cited by many members of the public in their comments at the public open house or in their letters.

5. How would the City of Aspen address impacts associated with the construction of these reservoirs?

Many laws, regulations, and permit requirements inform the selection, design and construction of reservoirs. These include the following:

- Compliance with an array of state and federal environmental laws, cultural and historic resource laws, and related regulations are required.
- The National Environmental Policy Act (NEPA) requires extensive environmental impact analysis, including a comprehensive analysis of environmental effects, prior to any construction.
- A thorough, legally mandated, and broad public process would be an essential part of constructing a reservoir.
- Environmental impacts, and impacts to cultural resources and socioeconomic factors would be identified and analyzed in context of any proposal.

Throughout the process, alternatives and mitigation actions would be developed with input from technical experts, land and water managers, advocacy organizations, and the public working together.

6. What happens if the City does not maintain these conditional storage rights?

These conditional storage rights were decreed in 1971, with 1965 appropriation dates. This means that they are senior to all water rights later appropriated and decreed on Castle Creek, Maroon Creek, and downstream on the Roaring Fork River. The largest of these later water rights are the Pitkin County RICD water right, and the instream flows on the Roaring Fork River, Maroon Creek, and Castle Creek.

If these conditional water rights are cancelled, Aspen will have no meaningful municipal water storage options. It will continue to operate "paycheck to paycheck" unless and until it develops other water storage options.

If the conditional storage rights are cancelled, and the City later determines it needs storage rights, it could apply for new junior storage rights. New storage rights would be junior in priority to all water rights decreed or filed for before Aspen applied for the new water rights. It is possible, depending on then-existing water rights and on the snowpack and streamflow patterns at the time, that Aspen would have limited opportunities to actually store water under those new rights. The City could also buy and dry irrigated farmland and store water historically consumed by the crops, or enter into an interruptible water supply agreement with irrigators. Storage of water available from dry up of irrigation, whether as a result of “buy and dry” or an interruptible water supply agreement, results in loss of irrigated lands, and the associated environmental consequences.

7. Others have relinquished conditional water rights, such as those on the Crystal River. How was the decision made by other entities different from the decision before the City of Aspen?

Aspen is a water provider, but unlike most water providers, it does not have storage to enable it to mitigate the effect of fluctuating supplies and demands. Aside from these conditional rights, Aspen has no other water storage rights that could be used to supply its customers or allow it the flexibility to help the CWCB protect instream flows. The reasons water providers relinquish conditional water rights are varied, and unique to the provider itself, requiring consideration of both future projections, and relative the merits, costs and benefits of alternative options.

Several years ago, the Colorado River Water Conservation District, which is not a water provider, and the West Divide Water Conservancy District, relinquished large conditional storage rights for two large reservoirs on the Crystal River, the Osgood Reservoir and the Placita Reservoir. These very large projects, totaling almost 200,000 acre-feet (twice as large as Ruedi Reservoir) were included in a plan to store water from the Crystal River at Redstone, inundating Redstone, and deliver the water to Divide Creek to be used for irrigation and oil shale uses. Ultimately, the districts determined that because the project was not economical, and there was lack of support for the project, especially locally, and because the River District has various other water projects, storage reservoirs, and supplies, most of these rights could be relinquished. The potential remains for a much smaller Placita Reservoir – around 4,000 acre-feet – at the bottom of McClure Pass.