

# CASCADE WATER

## Public Information Regarding Current Issues

The purpose of this fact sheet is to ensure all Cascade water ratepayers are aware of the varied and serious issues facing the beautiful town we all hold dear. Hopefully this factual presentation of water-related issues will inform and empower you to become actively involved in solving these problems to ensure a prosperous future for Cascade. The Cascade residents involved in preparing this statement are not legal professionals. They have researched public records and attended public meetings and have made their best-faith efforts to understand the complicated issues and explain them in simple language. If there are errors in legal interpretations, those are completely unintentional and based on a lay person's understanding of facts.

### Cascade Water History

- **Water Rights:** Contract agreement (1934) between Cascade Public Service Company (CPSC) and the City of Colorado Springs for Colorado Springs Utilities (CSU) to provide a maximum of 0.4 ft<sup>3</sup> of water through Cascade Creek to supply the distribution facilities. The water rights are currently held by the El Paso County Trustee's Office as collateral for outstanding debts owed to the Realty Management Group.
- **Current Supply:** Due to water quality issues in 1989, CSU began providing Cascade with water from their Ute Pass Water Treatment Plant via a storage tank in Cascade in 1990. An agreement (*please refer to 1990 Agreement further down in this document*) made this same year resulted in a "Pipeline Surcharge" to each customer and clean, filtered water from the CSU system. Currently Cascade residents pay CSU the "outside city limits rate" of 150% of the in-city cost, plus any additional fees as set by the Board.
- **Current Management:** Mr. Philip J. (PJ) Anderson purchased the Cascade Town Company (2003) which included the vacant Cascade land and assets of the water company which had been owned by the Cusack Family. Mr. Anderson is the president and owner of the CPSC. In 2004, Mr. Anderson formed the Cascade Metropolitan District No. 1 (The District, CMD) under Colorado's Title 32. He organized the District as its first President. All decisions are made by a five-person Board: one President and four Board members. Individuals can only be eligible for election to the Board only upon entering into an agreement with the President to purchase land in the District. Until 2011 (*refer to alleged embezzlement*), CMD was run by District Manager, Mr. Terry Malcom. Mr. Malcom is an attorney and personal friend of Mr. Anderson. He was hired by Mr. Anderson as Manager of the Cascade Public Service Company first; then became Manager of the CMD when the District was formed.

**Current Operations:** The Board develops and approves an annual operating budget and reviews and approves spending for system operation/maintenance at Board meetings. At the March 25, 2014 Board meeting the management company stated it would require an additional \$18,000 a month for the CPSC to be financially solvent. This may translate into a future fee increase.

### Alleged embezzlement:

Mr. Malcom was allegedly using a claim of CSU's faulty water meter to convince the CMD Board that CSU was over-charging CMD. Meeting Minutes show this was discussed at Board meetings between 2009 and 2013. Mr. Anderson engaged the CMD in a lawsuit regarding CSU's alleged overbilling. During this time, CSU did not receive all payments owed for the water Cascade was using, resulting in unpaid bills to CSU that now amount to \$493,000. Additional District funds are unaccounted for as well. Mr. Malcom was also the manager of Arabian Acres water district in Teller County and funds have allegedly disappeared from that District as well. The matter is very complicated because investigation involves both Districts. The County District Attorney's Office with support from the State Attorney General is actively investigating a criminal case.

The result is an alleged \$840,000 embezzled from Cascade Metro 1 District (CMD) sometime between 2009 & 2013. CMD is seriously short of funds to maintain Cascade's system.

As a Department of State Government, CMD was required to have an annual financial audit of its books. It did so. The District's auditor failed to identify Mr. Malcom's alleged fraudulent book keeping. The Board claims lack of knowledge of any of Mr. Malcom's activities to allegedly disguise missing funds.

To show "good faith" towards paying the unpaid bills to CSU, the Board voted on a \$25/month charge ("*Water Provision Fee*") in March 2014 as a "temporary" repayment schedule. Mr. Anderson hopes that the lawsuit against CSU or other legal proceedings may result in other revenues to repay debt owed. Although the Board has stated in its public meetings that there is no guarantee, they hope the period for the \$25/month charge will not exceed five years. An Agreement was entered into with CSU on February 7, 2014 for this repayment schedule.

**Colorado Springs Utilities Issues:**

- **1990 Agreement:** In exchange for Cascade receiving water from CSU to avoid EPA fines for the lack of providing filtered water, CPSC allowed CSU to divert its water rights into the CSU water distribution system.
  - **Lawsuit:** A lawsuit was filed by CPSC (Case No. 2009CV7196) in District Court in November of 2009 to determine what water rights would be retained by CPSC if the 1990 agreement with CSU was terminated. Ultimately, the Colorado Court of Appeals sided with CSU (04/12/2012) that it could retain in their possession the water rights held pursuant to the 1990 agreement. However, the Court ruled that termination of the 1990 agreement by CPSC due to a default by CSU, all water rights could revert back to CPSC.
  - Hence a second lawsuit (2011CW42) was filed by CPSC in the Water Court on 06/20/2012 alleging that CSU was in default due to failure to protect the CPSC water rights and was later amended to include a Breach of Contract for overbilling the water service provided. The hearing of this lawsuit by the court is on hold until Mr. Malcom can be deposed.
- Potential future takeover:** No recent discussions with CSU have occurred. At a minimum, expansive and expensive upgrades might be necessary.

**Short/Long-Term Sustainability of the Cascade Water System**

- **Financial** - Current debt owed by Cascade Metro is summarized below. All current debt obligations are projected to be retired by 2038.

Original Amount (\$)	Reason	Grantee	Date Incurred	Payment Status
600,000 line of credit interest along with a 400,000 cash grant	Distribution System Improvements	20-year loan later negotiated with Department of Local Affairs (DOLA) in 2011 for 25 years	04/2005 (original), 08/2011 (renegotiation of terms)	Partial interest payments only made in 2008 and 2009. After loan negotiation, payments restarted in 2011.
96,648	Prior accrued/unpaid interest from 2005 DOLA loan	DOLA	Matures in 2017	
100,000 @ 7.9% interest	Repayment of CSU Debt	Carl Turse	02/2011 Payment was credited by CSU	This bond kept district current for only 4 billing cycles
495,913 plus 1% interest charge per month	What Cascade owes CSU during alleged embezzlement timeframe	CSU	Signed 02/05/2014 Approved by CMD 02/25/2014	Payments commence in April 2014 – projected debt retirement is no earlier than 5 years

- **Structural** - The majority of the distribution system is 80+ years old. The water loss through the distribution system (before it gets to your home) has been estimated by the CMD as ranging between 30% and 50%. But they really don't know for sure what the losses are. The 2014 budget reflects an operating loss with no money budgeted for repairs to the system.

The current structure is such that only the Cascade Metro District board is making decisions for the ratepayers. This includes, but is not limited to, what fees must to be imposed, the operating budget and how our money is spent, the short and long-term operation and management of our water system including how our rates are allocated, and, generally, *the future of our water*.

**What Can I Do?**

- **Get informed**
  - Board meetings are public and held at 5:00 PM on the 4th Tuesday of each month at the Cascade Volunteer Fire Department. Cascade Metro District Board meeting. minutes and other official documents are public and available at the Cascade library.
  - Sign up for the Cascade community under [www.cascadeco.nextdoor.com](http://www.cascadeco.nextdoor.com) for community information sharing.
- **Get involved**
  - A group of concerned ratepayers have been meeting informally every few weeks to discuss action. An Informational Meeting has been scheduled for Sunday, June 22, 3-5 pm at Marcroft Hall, 9105 Chipita Park Rd. in Chipita Park.

***The next water board meeting is scheduled for 6/24/14 at 5:00 pm. This is a good time to get your questions answered.***

*All information is current as of June 2, 2014.*

**6/02/14**