**FCC II AUGUST 12, 2021 MEETING NOTES**

**MAIN PURPOSES AND DECISIONS OF THE AUGUST 12TH COMMUNITY MEETING (see below agreed action items also):**

**1. TO DISCUSS HOW THIS FIGHT IS FOR THE WELLS OF BOTH ELBERT COUNTY AND DOUGLAS COUNTY/FRANKTOWN. INDEPENDENCE DEVELOPMENT IS IN ELBERT COUNTY BUT WILL AFFECT WELLS IN BOTH COUNTIES IN THE UPPER DAWSON.** **FCCII CONTINUE TO BE AS AGGRESSIVE AS POSSIBLE TO FIGHT FOR THE WELLS OF BOTH COUNTIES.**

**2. FOR FCC II ATTORNEY, JOHN BUCHANAN, TO SPEAK ON THE PRESENT STATUS OF THE CASE AGAINST THE INDEPENDENCE “WATER GRAB” AND TO ANSWER AUDIENCE’S QUESTIONS.**

**3. FOR THE FCC II ATTORNEY TO EXPLAIN THE PROTEST THE FCC II HAS FILED AGAINST THE WATER COURT REFEREE’S DECISION TO GRANT INDEPENDENCE’S APPLICATION. IT APPEARS THAT THE REFEREE’S RULING WAS ENTERED WITHOUT ADDRESSING ANY OF THE FCC II’S OPPOSITION POINTS AND COMMENTS. BY THE FCC II FILING THE PROTEST ALL OPPOSERS OPPOSITIONS ARE PRESERVED.**

**4. MAIN DECISIONS:**

**A. CITIZENS FROM BOTH FRANKTOWN AND ELBERT COUNTY ATTENDED. THERE WAS A UNANIMOUS VOTE AND AGREEMENT THAT THE FCC II SHOULD CONTINUE THEIR PROTEST AND PROCEED TO TRIAL. THE REFEREE’S DECISION IS NOT ADMISSIBLE AT TRIAL. TRAIL STARTS EVERYTHING NEW.**

**DISCUSSION ON HOW DONATIONS ARE ESSENTIAL TO CONTINUE. GOAL: $50,000 BASED ON ATTORNEY’S ESTIMATE. IT WAS REQUESTED THAT A PAYPAL ACCOUNT BE SET UP ON “savefranktown.com” WEBSITE WHERE YOU COULD PAY WITH YOUR PAYPAL ACCOUNT OR BY DEBIT OR CREDIT CARD. THIS HAS BEEN DONE. JUST SCROLL DOWN TO WHERE IT SAYS “DONATE,” CLICK ON THAT AND IT WILL TAKE YOU TO WHERE YOU CAN DONATE. ALSO, YOU CAN PAY BY CHECK. SEND CHECKS TO FCC II, PO BOX 667, FRANKTOWN, CO. 80116.**

**B. TO DISCUSS A LETTER FOR THE COMMUNITY TO SIGN AND SEND TO THE JUDGE IN PROTEST OF THE REFEREE’S DECISION TO GRANT INDEPENDENCE’S APPLICATION. THIS WAS ALSO VOTED ON AND APPROVED. IT WAS REQUESTED THAT A SUGGESTED LETTER BE POSTED ON THE “savefranktown.com” WEBSITE THAT CAN BE DOWNLOADED, SIGNED AND SENT TO THE JUDGE AT THE WATER COURT. THAT HAS BEEN DONE.**

**C. IT WAS REQUESTED THAT A FACT SHEET OF THE BASIC WATER FACTS BE WRITTEN AND POSTED ON THE WEBSITE. THAT IS IN PROCESS.**

**BASIC FACTS FROM MEETING:**

**COMMENTS FROM ATTORNEY:**

Fight is over withdrawing non-tributary water (Non-Tributary refers to water found in deep aquifers that are not geologically or hydrologically connected to streams, rivers, or creeks.) from the Upper Dawson for commercial and industrial use AND off-site (See back of agenda attached with facts explaining this).

* Need to consider what streams are impacted
* Years and amount of stream depletion=max 100 years under Colorado law
* Running Creek and Cole Creek are the 2 streams
* Independence already has residential plan – wants this application approved by the water court so they can significantly expand use of the 75 acre feet per year (**24,438,867.39 GALLONS per year)** from residential only to municipal and industrial and to take water off property
* They must prove they can replace stream depletion
* Wells in Upper Dawson might be able to claim injury if the Laramie Fox Hills aquifer water is needed for replenishing water used from the Upper Dawson. That water is toxic and there are concerns it could infect wells with any allowed replenishment
* Well spacing requirements must be 600 feet from another (active)
* In granting Independence’s application the water court Referee did not follow any standards required by the water court rules
* Trial could be 1 -1 ½ yrs. out
	+ Terms and conditions must be met by Colorado Law to replace water depletion
	+ 2-3 months for applicants to respond
	+ 2-3 months for opposers to respond
	+ Activity happens closer to trial
	+ 9 months before trail expert disclosures are filed
	+ 3 months later opposers file their expert reports
	+ As the movement gets closer to trial- and deadlines are approaching- it gets more expensive. Estimate at least $30,000 - $50,000.
	+ Follow the process
		- Court will determine when we need to appear w/ disclosures and responding, preparing for trial, etc. “Discovery”
* Independence (Applicant)
	+ Has been poor at replying to comments from Opposers
	+ Has not provided cases for water usage--they need to be explicit
	+ Has not provided how many commercial businesses would be using water and for what?
	+ Has not provided how many houses served
	+ Fracking in the picture but no plan yet
	+ Has not provided how much water consumed by what?
	+ Has not provided how much water will go into the streams- where will the return flows go?
	+ Lack of descriptions for water sources
	+ Applicant has right to make changes- must prove they can replace stream depletion, If Applicant fixes all of the issues with their application, will be more difficult to win this fight.
	+ Reason why applicant has not done all of this is a speculation that they are waiting to see if everyone drops out
* Some discussed focus points:
	+ Latest decree- other Denver basin water rights- what other 3rd part sources do they own- challenge case
	+ Decrease amounts of uses they are claiming- whittle down applicant’s request for increased uses of the 75 acre feet of water
	+ Water Quality issues if they have to use Laramie Fox Hills- aquifer for pumping out into streams for augmentation? Laramie Fox Hills has very bad water quality. Have to prove quality of the water
	+ Could cost 1M+ to 2.5M for treatment plant if Laramie Fox Hills has to be used
	+ Narrow the scope- asking for setbacks ½ mile from property closest to drill well
	+ Thing’s applicants are proposing are very expensive
	+ Not enough return flows-pumps from Laramie Fox Hills 100K to 1million for pipelines, permits
	+ We should ask for court procedural safeguards must happen.
	+ Ask for $$$ in escrow for right now to pump
	+ Castle Rock does not use Laramie Fox Hills for drinking water
	+ Independence can’t sell the water within or out of Elbert County at this time. But Independence can request a hearing with Elbert County Commissioners to ask for approval to permit this.
	+ Opposition process in water court has been wholly inadequate with the referee. Questions were asked as to whom oversight of the Referee has. Thus, the request for the letter for community members to sign and send to the judge.
	+ Judge’s office sees all reports and letters--clerk reviews

ACTION IDEAS/NEXT STEPS FROM MEETING:

* + Finish Protest and file for trial approved by audience. Donations needed for this.
	+ FCCII CONTINUE TO BE AS AGGRESSIVE AS POSSIBLE TO FIGHT FOR THE WELLS OF BOTH COUNTIES.
	+ Community at the meeting want a form letter created for people to sign and mail to the water court to create awareness at the water court of the people who are in opposition to this application and what happened with the water referee. Want it posted on the savefranktown.com website for downloading, signing and sending to the water court judge.
	+ Get to Elbert county commissioners as they will have to approve water to be taken off property if Independence wins in water court.
	+ Get the word out- join a group
	+ Try to support existing groups or form groups to have more $ to fight the applicant.
	+ As we file- look at opposition response
	+ savefranktown.com web master will set up funding for donations on savefranktown.com through PayPal.
	+ Post water usage definitions on savefranktown.com website
	+ Questions call Diana Love at 303.814.8704
	+ Use the power of the press
	+ Sustaining effort required funding. Donations crucial to continue to fight Independence “water grab’ of the Upper Dawson.
	+ Continue communications. GET THE WORD OUT THAT, **BASICALLY, ALL OF OUR AQUIFERS DO NOT REPLENISH. WHEN THEY’RE GONE, THEY’RE GONE.**
* Who has filed Oppositions?
	+ Close to 400 private citizens without an attorney (not necessary to file a Protest because FCC II filed one)
	+ West Albert County Well hired an attorney
	+ FCCII hired an attorney
	+ Portalerk (sp?) Corp hired an attorney
	+ Married couple hired an attorney
* FCC II’s Treasurer’s report- see attached report
	+ 15K from donations to retain John Buchanan (Water Attorney)
	+ It’s clear more funding is needed to fight the applicant. Request that a PayPal/debit card/credit card ability to pay be put up on the FCC II website.
	+ **IT SHOULD BE NOTED** that the court required notice of the filing of the Protest to all Opposers (which included notice to almost 400 private citizens that did not have an attorney). That would have cost $4500 dollars if our attorney and his staff had to handle it. The FCC II Treasurer, Hyla Jenks, spent numerous days entering those email notices, which had to be done one at a time, so Opposers could get the required notice of the FCC II filing of the Protest of the referee’s decision. Because 16 emails could not be found, they were mailed. So it cost the FCC II a total of only $47.00 dollars in mailing to complete this notice because of her efforts. Many, many thanks to Hyla. Being careful with your donations is very important to the FCC II Board.