

February 1, 2019

To: United States District Court for the District of Arizona

From: Roger Carter, Court Monitor

Re: February 2019 Monitoring Report for the cities of Colorado City, Arizona and Hildale, Utah.

This report is submitted in compliance with § V.C. (39) of the Judgement and Decree Granting Injunctive Relief (“Order”), requiring a written report every 90 days on injunction compliance by the Defendant Cities and the activities of the Court Monitor.

This report will cover the period from November 1, 2018, to January 31, 2019, and include a current status of compliance on all the Order requirements, identify any obstacles to the work of the Monitor and provide general observations (§ V.C. (40)).

Fair Housing Injunction Requirements

Items in Compliance with the Injunction

The towns of Hildale, Utah and Colorado City, Arizona are currently in compliance with the following Court injunction requirements.

1. Subdivision Plat - Recorded September 26, 2017.
2. Adoption of Building Department policies and codes - Adopted September 2017.
3. Water Service regulations - Adopted September 2017.
4. Culinary Water Impact Fee - Hildale, Utah adopted a new water impact fee on January 25, 2018, and by Colorado City on February 13, 2018. This requirement is complete.
5. Elected and Staff Contact Information on the website - All information is current.
6. Notice of all Meetings, Minutes, etc. - **Meeting agendas have been posted correctly, however, there is a limited number of minutes displayed. Only two Planning Commission meeting minutes were posted in 2018 (January 8 & February 5) and**

one posting of Utility Board minutes (January 30). The Monitor recommends that all public meeting minutes be timely posted in accordance to open meeting laws and for public review.

7. All Department Codes, policies, regulations - All information is current.
8. Mandatory Education & Training - The second year of Constitutional training occurred on October 24, 2018. The Fair Housing Training was conducted on November 28, 2018. Injunction Training has not happened for the second year of the Injunction but is being scheduled sometime in the next couple of months. **The Court Monitor does note an area of concern as it relates to these trainings, however. While the first year training resulted in full compliance, with almost 90% in attendance at the actual meetings and the remaining employees viewing a video of the training, the second year has not seen the same level of participation. Participation in the Fair Housing training has only resulted in 48% compliance among the employees and government officials (34 of 71 participating). The Constitutional Training has a compliance percentage of 39% (29 of 74 participating). Employees are required to sign in when they attend the live trainings and sign an affidavit of compliance when they view the videos. The Monitor has also attended all the trainings to ensure compliance with the Injunction. The communities need to place this as a high priority within the next reporting period to stay in compliance with court orders. This will be monitored closely to ensure compliance (Exhibit A).**

Outstanding Injunction Items

Injunction training is still to be scheduled within the next couple of months. Public officials need to ensure that all identified employees have received all three training

components. Public officials need to ensure that all legislative or appointed bodies meeting minutes are timely posted to the city websites.

Current Monitoring Efforts

Marshalls Office

The Monitor is to ensure that there are no violations of Fair Housing requirements by employees of the Marshal's Office during their interaction with the public.

- A. The Monitor continues to evaluate fair housing-related Incident Reports and Computer Aided Dispatch (CAD) reports ensuring that all calls are reported and done so accurately. There has been good cooperation between Chief Askerlund and the Monitor.
- B. The Monitor works closely with both the Police Consultant and Mentor and provides the following summary, as provided by them.
 - a. Consultant - The Marshall's office has completed the hiring of the two new officers and two sergeants. The department is now fully staffed. The office continues to grow and develop professionally. Department policies are expected to be received back from the DOJ by the end of February, at which time a full policy manual will be provided. Once completed, daily training bulletins will then be issued to the department to help guide their functions.
 - b. Mentor - The department is working better than expected at this stage of compliance. This is mainly due to the new chief marshal and the new hires. The Mentor does note some concern in the relationship between the marshal's office and the fire department as some of the previous officers are now working in that department. The chief marshal will work on strengthening his department's relationship with the fire department.

Monitor

During this reporting period, the Monitor:

- A. The Monitor attended city and town council meetings, planning commission meetings, utility board meetings, and executive sessions.
- B. Met with staff and elected officials.
- C. Reviewed modifications to codes or ordinances that pertain to Fair Housing.
- D. Attended and provided input on the creation of the new zoning codes for Hildale, Utah.
- E. **The two communities have requested a change to the culinary water impact fee. Per sections 21 and 34(c) of the Court Injunction, the United States and Court Monitor are required to review the request and provide an opinion. The Court Monitor provided his response on January 22, 2019 (Exhibit B).**
- F. Audited building and zoning applications, utility applications and work orders, business license applications, GRAMA requests, and land-use related police calls for service.
- G. Followed up on the following complaints by residents:
 - a. The Monitor received one complaint this past quarter concerning specific building department requirements. A direction was provided to the complainant, and the matter was resolved.
 - b. A complaint from the previous quarter regarding disparate treatment by the utility department was resolved to all parties satisfaction.

Summary

Public official work slowed down during the last quarter due to the holiday season. However, in November a new member of the Colorado City Council was elected. The Monitor met with this newly elected official to provide training on the Court Injunction. Colorado City continues to work on their zoning codes and is anticipating adoption of these in the upcoming year. Policies and procedures continue to be put in place in the utility department. These policies include language which allows citizens, who may feel aggrieved by a governmental decision, to pursue an appeal route within the organization. These new policies will ensure more sound due process and a more transparent decision-making procedure.

The concern for government officials as they move into the second year of court oversight will be maintaining the vigilance in compliance with all court-ordered requirements. Each of the mandates imposed upon the communities is to not only ensure that the system provides equal treatment to all citizens but also to guarantee that this fairness becomes fundamental, cultural, systemic, and enduring within the organization. To this end, both the injunctive requirements and oversight length of time was imposed.

I am confident that the communities will continue to respond to the Court Injunction and the direction of the Court Monitor in a positive way and with an eye towards a bright future.

Communication

This report was provided electronically and in hard copy to:

To plaintiff:

Sean Richard Keveney
United States Department of Justice
Civil Rights Division
950 Pennsylvania Ave, N.W.
Washington, DC 20053

To Colorado City:

Jeffrey C. Matura
Graif Barrett & Matura P.C.
1850 North Central Avenue, Ste. 500
Phoenix, AZ 85004

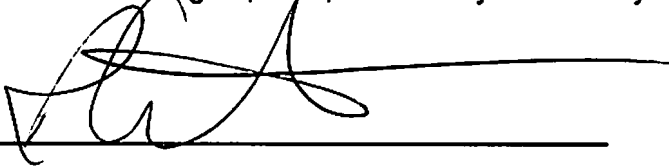
Town Manager
Colorado City
PO Box 70
Colorado City, AZ 86021

To Hildale City:

Christian Kesselring
320 East Newel Ave
PO Box 840490
Hildale, UT 84784

Mayor - Hildale City, Utah
320 East Newel Ave
PO Box 840490
Hildale, UT 84784

DATED at Washington, Utah, this 1st day of February 2019.

A handwritten signature in black ink, appearing to be 'Roger Carter', is written over a solid horizontal line.

Roger Carter, Court Monitor

Exhibit A

Fair Housing and Constitutional Training			
U. S. District Court Mandatory Education and Training Workshops			
Fair Housing Training: September 5, 2017			
Constitutional Training: September 25, 2017			
x = Attended in person			
X = Viewed later (separate affidavit)			
NLW = No longer with the Town			
NR = Not required to receive training			
		Training Received	
Category	Name	Fair Housing	Constitutional Requirements of Injunction
Colorado City Town Council			
	Joseph Allred	x	x
	Anthus Barlow	x	X
	Jeffery Jessop	x	x
	Ralph Johnson	x	x
	Donald Richter	x	x
	Karen Barlow	X	x
	Anthony Barlow	x	NLW
	Joanne Shapley	X	x
Hildale Town Council			
	Philip Barlow	x	x
	Carlos Jessop	X	x
	Brian Jessop	X	x
	Elmer Johnson	x	x
	Doran Jessop	X	X
	Edwin Barlow	x	x
	Donia Jessop	X	X
	Maha Layton	X	X
	Jared Nicol	X	X
	Jvar Dutson	X	X
	Stacy Seay	X	X
Utility Board			
	Jacob Jessop	x	x
	Craig Roundy	X	X
	Berklee Holm	x	NLW
	Sterling Jessop Jr	x	x
	Moroni Johnson	NLW	NLW
	Alan Dockstader	x	x
	Patrick Johnson	x	x
	Jason Black	X	X
	Arvin Black	X	X
	Nathan Burnham	X	X
	Alma Cawley	X	X
	Haven Barlow	X	X
	Michael Cawley		

Colorado City/Hildale Planning Commission				
Nephi Allred	x	X	X	
Paul Stanley Jessop	X	X	x	
Millward Barlow Jr.	X	X	NLW	
Kim Knudson	x	x	x	
Charles Hammon				
Charles Bradshaw				
Aaron LaCorti				
STAFF				
Administrative Staff				
Andrew Barlow	x	x	x	
Raymond Barlow	x	x	NLW	
Vance Barlow	x	x	x	
Leonard Black	NR	NR	NR	
David Darger	x	x	NLW	
Rachel Fischer	X	X	x	
Kent Page	x	NLW	NLW	
Jim Peterson	X	X	x	
Louise Stubbs	X	x	x	
Lovisa White	x	x	x	
Rosaleta White	x	X	x	
Christian Kesselring	X	X	x	
Janitorial Staff				
Makayla Barlow	NR	NR	x	
Midge Barlow	NR	NR	NR	
Mildred Barlow	NR	NR	NR	
Katrina Stubbs	NR	NR	NR	
Airport Board & Staff				
Daniel Barlow Jr.	X	x	X	
Ladell Bistline Jr.	x	x	x	
Paul Black	x	x	x	
Charles Cooke	X	X	x	
Jacob Jessop	x	x		
Emergency Dispatch Staff				
Kevin Barlow Jr.	NR	NR	NR	
Lorenzo Barlow	NR	NR	NR	
Mary Barlow	NR	NR	NR	
Natalie Barlow	NR	NR	NR	
Patton Barlow	NR	NR	NR	
Sterling Barlow	NR	NR	NR	

John R. Barlow	X	X	x
Justin Barlow	x	x	NLW
Melvin Barlow	x	NLW	NLW
Patton Barlow	x	x	NLW
Richard J. Barlow	x	x	NLW
Susie Barlow	X	X	x
Vincen Barlow	X	X	X
Weston Barlow	x	x	x
David Boshard	X	X	x
Angelene Chatwin	X	X	x
Michelle Chatwin	x	x	NLW
Lavern Fischer	x	x	NLW
Leslie Jessop	X	x	X
Nap Jessop	x	X	X
Victor Jessop	x	x	X
Mary Ellen Johnson	x	x	x
Mariah Lacorti	X	X	x
Cathryn Steed	x	x	NLW
Harrison Johnson			

Fair Housing and Constitutional Training			
U. S. District Court Mandatory Education and Training Workshops			
Fair Housing Training: November 28, 2018			
Constitutional Training: October 24, 2018			
x = Attended in person			
X = Viewed later (separate affidavit)			
NLW = No longer with the Town			
NR = Not required to receive training			
		Training Received	
Category	Name	Fair Housing	Constitutional Requirements of Injunction
Colorado City Town Council			
	Joseph Allred	x	x
	Anthus Barlow	x	
	Jeffery Jessop	x	x
	Ralph Johnson		
	Donald Richter	x	
	Alma Hammon	x	
	Joanne Shapley		
Hildale Town Council			
	Donia Jessop		
	Maha Layton		x
	Jared Nicol	x	x
	Jvar Dutson		
	Lawrence Barlow		
	Stacy Seay	x	
Utility Board			
	Arvin Black		
	Haven Barlow		
	Michael Cawley	x	
	Sterling Jessop Jr	x	
	Stacy Seay		
	Jason Black		
	Nathan Burnham		
	Ralph Johnson		
	Jvar Dutson		
Colorado City/Hildale Planning Commission			
	Charles Bradshaw		
	Aaron LaCorti	x	
	Paul Stanley Jessop		
	Charles Hammon	x	
	Jennifer Kesselring		
	Randy Barlow	NR	x
	Brigham Holm	x	

STAFF			
Administrative Staff			
	Andrew Barlow	x	x
	John R. Barlow		x
	Vance Barlow	x	
	Vincen Barlow		x
	Louise Stubbs	x	x
	Lovisa White	NR	x
	Rosaleta White	x	x
	Christian Kesselring	x	
	Rachel Fischer		x
	Dean Cooke		x
	Warren Darger	x	
	John T. Barlow	x	
Airport Board & Staff			
	Daniel Barlow Jr.		
	Ladell Bistline Jr.	x	x
	Paul Black	x	x
	Charles Cooke		
	Jacob Jessop		x
Law Enforcement Staff			
	Mark Askerlund		x
	Daniel Roy Barlow		x
	Taylor Barlow	x	x
	Shaun Cox		x
	Max Horsley		x
	Shem Jessop		
	Sam Johnson	NR	
	Daniel Musser		x
	Hyrum Musser	x	
	Robbins Radley	x	
	Shane Barnard	x	
	Benjamin Barlow	x	
	Hyrum Roundy		
Magistrate Court			
	Barbara Brown		

Utilities Department			
	Harrison Johnson	x	
	Susie Barlow		
	Weston Barlow	x	x
	Angelene Chatwin		
	Nap Jessop		
	Victor Jessop		
	Mariah Lacorti		
	Ammon Todd Jim	x	x
	Ralph Johnson Jr.	x	x
	Athena Cawley	x	
Other Employees (were not required)			
	Heber White	x	x
	Nathaniel Barlow	x	x
	David Lane	x	
	Katrina Stubbs	x	

Exhibit B

January 22, 2019

Via E-mail and U.S. Mail

Steven Ryals
United States Department of Justice Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20053

Jeff Matura
Barrett & Matura
8925 East Pima Pkwy
Suite 100
Scottsdale, AZ 85258

Christian Kesselring
Hildale City, Utah
320 East Newell Ave
Hildale, UT 84784

Re: Hildale, Utah and Colorado City, Arizona Notice of Intent to Change Culinary Water Impact Fee

I am in receipt of both Hildale City and Colorado City's request for a reduction in the Culinary Water Impact Fee ("Impact Fee"). Both cities have complied with the requirement of requesting a change in Impact Fee as outlined in section 21 on page 38 of the Court's April 18, 2017, Injunctive Order which states:

Except as indicated in paragraph 17, above, the amount of any impact fee for culinary water connections may only be modified if written notice is given to counsel for the United States and the Monitor 30 days before the proposed modification is to take effect and the United States and the Monitor makes no objection thereto. The notice referenced in this paragraph must specify the new impact fee amount and must include any reports or analyses supporting the modification. The Culinary Water Impact Fee Plan shall be reviewed by a licensed engineer or engineering firm at no less than five-year intervals.

Furthermore, section 34(e) states that the Monitor should

review any changes proposed by the Defendant Cities to the Building Department Policies and Procedures, the Water Services Regulations, or the culinary water impact fee and provide a statement of objection or non-objection

to the Defendant Cities and the United States within 30 days of receiving notice of the proposed changes.

This response satisfies both sections 21 and 34 of the April 18, 2017, Injunctive Order.

The Court Monitor finds no objection to the reduction of the Impact Fee to the amount of \$0.00. This opinion is based upon the following:

1. There is no prima facie indication that this reduction will result in any discriminatory policy as long as it is applied to all applicants equally.
2. Although state statutes do require engineering analysis as a basis for Impact Fee calculation, it is left to the discretion of the legislative bodies to enact an Impact Fee that is less than the proposed maximum amount as outlined in the engineers Capital Facilities Plan.
3. The cursory analysis provided by the joint Hildale/Colorado City Utility Department does indicate that due to population decline there is a surplus of resources that were not anticipated in the current Capital Facilities Plan, thereby, not requiring the future expansion of originally expected infrastructure. The analysis provided is sufficient to meet the requirement of section 21 of the Injunctive Order.

The Capital Facilities Plan and Impact Fee for these two communities is unique because it provides a joint analysis and similar fee requirement on two different cities because they share an integrated water system, in essence, a regional facility. The complication arises in that each community will need to be cognizant of the particular Utah and Arizona statutes that govern the changing of each municipalities Capital Facilities Plan and Impact Fee. Due to this complication, the Court Monitor recommends the following.

1. Both cities should coordinate the timing of the elimination of the Impact Fee to be effective at the same point after they have met the requirements for modification under their appropriate statutes. Coordination of timing will provide equal treatment to all applicants being served by the same regional facilities. Arizona Statutes appear to have a higher threshold requirement for both modification and public involvement of their Plan and Impact Fee (see A.R.S 9-463.05). Therefore, Hildale should adjust their timing of implementation to coordinate with that of Colorado City.
2. An Impact Fee represents an agreement between the applicant and the communities that specific infrastructure will be provided in exchange for the payment of a fee. Based upon this, the cities should evaluate the number of applicants who have paid Impact Fees (including the community of Centennial Park) and consider refunding those fees or the pro-rata portion that will not be used to construct any originally anticipated facilities at the time of payment which will now not be built.

I commend both cities for their efforts in providing fair and equal policy and treatment to the members of their respective communities and look forward to their cooperatively implementing their recommendations.

Please let me know if you have any questions or concerns.

Sincerely,

Roger Carter
Court Monitor